



## CODE OF FEDERAL REGULATIONS

# Title 50

## Wildlife and Fisheries

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Parts 228 to 599

Revised as of October 1, 2012

Containing a codification of documents  
of general applicability and future effect

As of October 1, 2012

Published by the Office of the Federal Register  
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As of October 1, 2012  
Title 50, Part 200 to 599,  
Revised as of October 1, 2012  
Is Replaced by  
Title 50, Parts 200 to 227  
and  
Title 50, Part 228 to 599

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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 228.1  
refers to title 50, part  
228, section 1.*

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## 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 |

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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 Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 2012), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

### EFFECTIVE AND EXPIRATION DATES

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

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

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

#### OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 2001, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, or 1986–2000, published in eleven separate volumes. For the period beginning January 1, 2001, a “List of CFR Sections Affected” is published at the end of each CFR volume.

#### “[RESERVED]” TERMINOLOGY

The term “[Reserved]” is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a “[Reserved]” location at any time. Occasionally “[Reserved]” is used editorially to indicate that a portion of the CFR was left vacant and not accidentally dropped due to a printing or computer error.

#### INCORPORATION BY REFERENCE

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

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

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#### CFR INDEXES AND TABULAR GUIDES

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 Authorities and Rules. A list of CFR titles, chapters, subchapters, 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.

#### REPUBLICATION OF MATERIAL

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.

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#### ELECTRONIC SERVICES

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CHARLES A. BARTH,  
*Director,*  
*Office of the Federal Register.*  
*October 1, 2012.*



## THIS TITLE

Title 50—FISH AND WILDLIFE is composed of thirteen volumes. The parts in these volumes are arranged in the following order: Parts 1–16; part 17 (17.1 to 17.95(a)), part 17 (17.95(b)), part 17 (17.95(c) to (e)), part 17 (17.95(f) to end of 17.95), part 17 (17.96 to 17.98), part 17 (17.99(a) to 17.99(h)), part 17 (17.99(i) to end of part 17), parts 18–199, parts 200–227, parts 228–599, parts 600–659, and part 660 to end. The first nine volumes consist of parts 1–16, part 17 (17.1 to 17.95(a)), part 17 (17.95(b)), part 17 (17.95(c) to (e)), part 17 (17.95(f) to end of 17.95), part 17 (17.96 to 17.98), part 17 (17.99(a) to 17.99(h)), part 17 (17.99(i) to end of part 17), and parts 18–199 and contain the current regulations issued under chapter I—United States Fish and Wildlife Service, Department of the Interior. The tenth volume (parts 200–227) contains the current regulations issued under chapter II—the National Marine Fisheries Service, National Oceanic and Atmospheric Administration. The eleventh volume (parts 228–599) contains the remaining current regulations issued under chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; and the current regulations issued under 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 twelfth and thirteenth volumes (parts 600–659 and part 660 to end) contain the current regulations issued under chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2012.

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

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

For this volume, Jonn V. Lilyea was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

# Title 50—Wildlife and Fisheries

(This book contains parts 228 to 599)

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# CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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228.21 Assistant Administrator's decision.

AUTHORITY: 16 U.S.C. 1361 *et seq.*

SOURCE: 65 FR 39560, June 27, 2000, unless otherwise noted.

**§ 228.1 Basis and purpose.**

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Assistant Administrator of the National Marine Fisheries Service, to:

(1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations;

(2) Waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under the Assistant Administrator's jurisdiction;

(3) Prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations

to carry out the provisions of said sections, the Act refers the Assistant Administrator to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Assistant Administrator to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)).

(b) The purpose of this part is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d) of the Act.

**§ 228.2 Definitions.**

(a) *Party* means, for the purposes of this subpart:

(1) The Assistant Administrator or the Assistant Administrator's representative;

(2) A person who has notified the Assistant Administrator by specified dates of his or her intent to participate in the hearing pursuant to §§ 228.5 and 228.14(b).

(b) *Witness* means, for the purpose of this part, any person who submits written direct testimony on the proposed regulations. A person may be both a party and a witness.

**§ 228.3 Scope of regulations.**

The procedural regulations in this part govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section 103(d) of the Act with full protection for the rights of all persons affected thereby.

## § 228.4

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### § 228.4 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the FEDERAL REGISTER, together with the Assistant Administrator's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) of the Act (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

- (1) The nature of the hearing;
- (2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;
- (3) The legal authority under which the hearing is to be held;
- (4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));
- (5) Issues of fact which may be involved in the hearing;
- (6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;
- (7) Any written advice received from the Marine Mammal Commission;
- (8) The place(s) where records and submitted direct testimony will be kept for public inspection;
- (9) The final date for filing with the Assistant Administrator a notice of intent to participate in the hearing pursuant to § 228.5;
- (10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;
- (11) The docket number assigned to the case which shall be used in all subsequent proceedings; and
- (12) The place and date of the prehearing conference.

### § 228.5 Notification by interested persons.

Any person desiring to participate as a party shall notify the Assistant Administrator, by certified mail, on or before the date specified in the notice.

### § 228.6 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 228.4, the Assistant Administrator shall appoint a pre-

siding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

- (1) Change the time and place of the hearing and adjourn the hearing;
- (2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;
- (3) Rule upon motions, requests and admissibility of direct testimony;
- (4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;
- (5) Modify or waive any rule (after notice) when determining that no party will be prejudiced;
- (6) Receive written comments and hear oral arguments;
- (7) Render a recommended decision; and
- (8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or the original presiding officer's inability to act, the powers and duties to be performed by the original presiding officer under this subpart in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Assistant Administrator.

(d) The presiding officer may upon the presiding officer's own motion withdraw as presiding officer in a proceeding if the presiding officer deems himself or herself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of interest or other basis which might result in prejudice to a party, the hearing shall

recess. The Assistant Administrator shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Assistant Administrator may deem appropriate in the circumstances.

**§ 228.7 Direct testimony submitted as written documents.**

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 228.4), the final hearing agenda (§ 228.12), or within 15 days after the conclusion of the prehearing conference (§ 228.14) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness' relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing specifies otherwise.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Assistant Administrator's direct testimony in support of the proposed regulations and waiver, where applicable,

shall be available for public inspection as specified in the notice of hearing. The Assistant Administrator may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

**§ 228.8 Mailing address.**

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

**§ 228.9 Inspection and copying of documents.**

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910—unless the file is in the care and custody of the presiding officer, in which case the presiding officer shall notify the parties as to where and when the record may be inspected.

**§ 228.10 Ex parte communications.**

(a) After notice of a hearing is published in the FEDERAL REGISTER, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Assistant Administrator, Deputy Assistant Administrator, or Chief of the Marine Mammal Division, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding office shall not consult any person or party on any fact in issue or on the merits of the matter

## **§ 228.11**

unless notice and opportunity is given for all parties to participate.

### **§ 228.11 Prehearing conference.**

(a) After an examination of all the direct testimony submitted pursuant to § 228.7, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 228.4(b)(8)) at least 5 days before the prehearing conference.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the hearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

### **§ 228.12 Final agenda of the hearing.**

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the FEDERAL REGISTER within 10 days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list:

(1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and

(2) A final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut

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testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

### **§ 228.13 Determination to cancel the hearing.**

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Assistant Administrator his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Assistant Administrator shall then make a final decision in accordance with these regulations (§ 228.21).

### **§ 228.14 Rebuttal testimony and new issues of fact in final agenda.**

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 228.4:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Assistant Administrator by certified mail of an

intent to participate not later than 10 days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless that person previously notified the Assistant Administrator pursuant to § 228.5; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 228.7.

**§ 228.15 Waiver of right to participate.**

Persons who fail to notify the Assistant Administrator pursuant to §§ 228.5 and 228.14 shall be deemed to have waived their right to participate as parties in any part of the hearing.

**§ 228.16 Conduct of the hearing.**

(a) The hearing shall be held at the time and place fixed in the notice of the hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: Provided, that if that change in time or place of hearing is made less than 5 days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent documents published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he or she shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling by the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Assistant Administrator's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Assistant Administrator if made thereafter.

**§ 228.17 Direct testimony.**

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his or her name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies the witness as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness', if the witness is a party, or to the interests of the party who presented the witness.



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(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: Provided, that parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

### § 228.18 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Assistant Administrator's or his or her representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his or her name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and intro-

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duced in accordance with these regulations.

### § 228.19 Oral and written arguments.

(a) The presiding officer may, in his or her discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, the party shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state their arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

### § 228.20 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Assistant Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Assistant Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is

a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Assistant Administrator shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Assistant Administrator, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

(d) Within 20 days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Assistant Administrator any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the 20-day period to the Assistant Administrator at the previously mentioned address.

#### **§ 228.21 Assistant Administrator's decision.**

(a) Upon receipt of the recommended decision and transcript and after the 20-day period for receiving written comments on the recommended decision has passed, the Assistant Administrator shall make a final decision on the proposed regulations and waiver, where applicable. The Assistant Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Assistant Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Assistant Administrator's decision shall include:

- (1) A statement containing a description of the history of the proceeding;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(4) The Assistant Administrator's decision shall be published in the FEDERAL REGISTER. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

## **PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972**

### **Subpart A—General Provisions**

#### **Sec.**

- 229.1 Purpose and scope.
- 229.2 Definitions.
- 229.3 Prohibitions.
- 229.4 Requirements for Category I and II fisheries.
- 229.5 Requirements for Category III fisheries.
- 229.6 Reporting requirements.
- 229.7 Monitoring of incidental mortalities and serious injuries.
- 229.8 Publication of List of Fisheries.
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- 229.10 Penalties.
- 229.11 Confidential fisheries data.
- 229.12 Consultation with the Secretary of the Interior.

### **Subpart B—Takes of Endangered and Threatened Marine Mammals**

- 229.20 Issuance of permits.

### **Subpart C—Take Reduction Plan Regulations and Emergency Regulations**

- 229.30 Basis.
- 229.31 Pacific Offshore Cetacean Take Reduction Plan.
- 229.32 Atlantic large whale take reduction plan regulations.
- 229.33 Harbor Porpoise Take Reduction Plan Regulations—New England.
- 229.34 Harbor Porpoise Take Reduction Plan—Mid-Atlantic.
- 229.35 Bottlenose Dolphin Take Reduction Plan.
- 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

FIGURE 1 TO PART 229—DRIFT GILLNET PINGER CONFIGURATION AND EXTENDER REQUIREMENTS

AUTHORITY: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

SOURCE: 60 FR 45100, Aug. 30, 1995, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 229.1 Purpose and scope.**

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions

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for the taking of marine mammals incidental to certain commercial fishing operations from the Act's general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of Subpart B also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations except as provided for under §§ 229.4(k) and 229.5(f).

(g) The purposes of the regulations in this part are to:

(1) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations below the potential biological removal level for a particular stock, and

(2) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant lev-

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els approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9086, Feb. 24, 1999]

### § 229.2 Definitions.

In addition to the definitions contained in the Act and § 216.3 of this chapter, and unless otherwise defined in this chapter, the terms in this chapter have the following meaning:

*Act* or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

*American lobster* or *lobster* means *Homarus americanus*.

*Anchored gillnet* means any gillnet gear, including an anchored float gillnet, sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

*Assistant Administrator* means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

*Authorization Certificate* means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

*Bitter end* means the end of a line that detaches from a weak link.

*Bottom portion of the line* means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

*Breaking strength* means the highest tensile force which an object can withstand before breaking.

*Bridle* means the lines connecting a gillnet to an anchor or buoy line.

*Buoy line* means a line connecting fishing gear in the water to a buoy at the surface of the water.

*Category I fishery* means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or

more of any stock's potential biological removal level.

*Category II fishery* means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "occasional" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

*Category III fishery* means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

- (1) Ten percent or less of any marine mammal stock's potential biological removal level, or
- (2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of reliable infor-

mation indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "remote" by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.

*Commercial fishing operation* means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in §216.3 of this chapter) activities and aquaculture activities.

*Depleted species* means any species or population that has been designated as depleted under the Act and is listed in §216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

*Driftnet, drift gillnet, or drift entanglement gear* means a gillnet or gillnets that is/are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

*Fisher or fisherman* means the vessel owner or operator, or the owner or operator of gear in a nonvessel fishery.

*Fishery* has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

*Fishing or to fish* means any commercial fishing operation activity that involves:

- (1) The catching, taking, or harvesting of fish;
- (2) The attempted catching, taking, or harvesting of fish;
- (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (4) Any operations at sea in support of, or in preparation for, any activity

described in paragraphs (1), (2), or (3) of this definition.

*Fishing trip* means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port or the return of a fisher from tending gear in a nonvessel fishery.

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

*Float-line* means the rope at the top of a gillnet from which the mesh portion of the net is hung.

*Gillnet* means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term "gillnet" includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g., anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

*Groundline*, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

*Incidental* means, with respect to an act, a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

*Injury* means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered in-

jured regardless of the absence of any wound or other evidence of an injury.

*Insignificance threshold* means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal level for a stock of marine mammals. If certain parameters (e.g., maximum net productivity rate or the recovery factor in the calculation of the stock's potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification.

*Interaction* means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

*Large mesh gillnet* means a gillnet constructed with a mesh size of 7 inches (17.78 cm) to 18 inches (45.72 cm).

*Lead-line* means the rope, weighted or otherwise, to which the bottom edge of a gillnet is attached.

*List of Fisheries* means the most recent final list of commercial fisheries published in the FEDERAL REGISTER by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

*Mesh size* means the distance between inside knot to inside knot. Mesh size is

measured as described in § 648.80(f)(1) of this title.

*Mid-Atlantic coastal waters* means waters bounded by the line defined by the following points: The southern shoreline of Long Island, New York at 72°30'W, then due south to 33°51'N lat., thence west to the North Carolina/South Carolina border.

*Minimum population estimate* means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

*Negligible impact* has the same meaning as in § 216.103 of this chapter.

*Net productivity rate* means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

*Night* means any time between one half hour before sunset and one half hour after sunrise.

*NMFS* means the National Marine Fisheries Service.

*Nonvessel fishery* means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

*Observer* means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

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

*Potential biological removal level* means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;

(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and

(3) A recovery factor of between 0.1 and 1.0.

*Qualified individual* means an individual ascertained by NMFS to be reasonably able, though training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS.

*Regional Fishery Management Council* means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

*Reliable report* means a credible right whale sighting report based upon which a DAM zone would be triggered.

*Seine* means a net that fishes vertically in the water, is pulled by hand or by power, and captures fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used. In some regions, the net is typically constructed with a capture bag in the center of the net which concentrates the fish as the net is closed.

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

*Sink gillnet* or *stab net* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

*Sinking line* means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column.

*Small mesh gillnet* means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm).

*Spotter plane* means a plane that is deployed for the purpose of locating

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schools of target fish for a fishing vessel that intends to set fishing gear on them.

*Stowed* means traps/pots and gillnets that are unavailable for immediate use and further, all gillnets are stored in accordance with the following:

(1) All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected; and

(2) Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

*Strategic stock* means a marine mammal stock:

(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

*Sunrise* means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

*Sunset* means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

*Take Reduction Plan* means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

*Take Reduction Team* means a team established to recommend methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

*Tended gear or tend* means fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel.

*Tie-down* refers to twine used between the floatline and the lead line as a way to create a pocket or bag of netting to trap fish alive.

*Tie loops* means the loops on a gillnet panel used to connect net panels to the buoy line, groundline, bridle or each other.

*Trap/Pot* means any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching species including but not limited to lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

*Trap/pot trawl* means two or more trap/pots attached to a single groundline.

*Up and down line* means the line that connects the float-line and lead-line at the end of each gillnet net panel.

*U.S. waters* means both state and Federal waters to the outer boundaries of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

*Vessel owner or operator* means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

*Vessel of the United States* has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

*Weak link* means a breakable component of gear that will part when subject to a certain tension load.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39183, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7551, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1141, Jan. 9, 2002; 67 FR 1313, Jan. 10, 2002; 69 FR 6584, Feb. 11, 2004; 69 FR 43345, July 20, 2004; 71 FR 24796, Apr. 26, 2006; 72 FR 34642, June 25, 2007; 72 FR 57180, Oct. 5, 2007; 73 FR 51241, Oct. 2, 2008; 75 FR 7396, Feb. 19, 2010]

**§ 229.3 Prohibitions.**

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the injury or mortality of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(f) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(g) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(h) It is prohibited to fish with or possess trap/pot gear in the areas and during the times specified in § 229.32 (c)(2) through (c)(9) unless the trap/pot gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (c)(1) through (c)(9), or unless the gear is stowed as specified in § 229.2.

(i) It is prohibited to fish with or possess anchored gillnet gear in the areas and during the times specified in § 229.32(d)(2) through (d)(7) unless that

gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (d)(1) through (d)(7), or unless the gear is stowed as specified in § 229.2.

(j) It is prohibited to fish with or possess drift gillnet gear in the areas and during the times specified in § 229.32(e)(1) through (e)(6) unless the drift gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (e)(1) through (e)(6), or unless the gear is stowed as specified in § 229.2.

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in § 229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(3), or for (g)(3) unless the gear is stowed as specified in § 229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (i.e. gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in § 229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iii), (f)(2)(v), (g)(2), and (h)(2), or for the gear marking requirements for (h)(2) unless the gear is stowed as specified in § 229.2.

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the areas and for the times specified in § 229.33(a)(1), (a)(3), (a)(6), and (a)(8). This prohibition also applies to areas where pingers are required, unless the vessel owner or operator complies with the pinger provisions specified in § 229.33 (a)(2) through (a)(5) and (a)(7). This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).



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(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove gillnet gear from the areas and for the times as specified in § 229.34 (b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34(b) unless the gear complies with the specified gear restrictions set forth in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii) of § 229.34.

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under § 229.33 (a)(2) through (a)(5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under § 229.33(c).

(q)—(r) [Reserved]

(s) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet gear from the areas specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape Hatteras Special Research Area unless the vessel is in compliance with the ob-

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server and research requirements specified in § 229.36(d).

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 39184, July 22, 1997; 63 FR 66487, Dec. 2, 1998; 64 FR 7552, Feb. 16, 1999; 64 FR 9086, Feb. 24, 1999; 65 FR 80377, Dec. 21, 2000; 67 FR 1313, Jan. 10, 2002; 67 FR 59477, Sept. 23, 2002; 71 FR 24796, Apr. 26, 2006; 72 FR 57180, Oct. 5, 2007; 74 FR 23357, May 19, 2009; 75 FR 7396, Feb. 19, 2010]

### § 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of a commercial fishing operation in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must have in possession a valid Certificate of Authorization. The owner of a fishing vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The granting and administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related programs wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a program, NMFS will publish a notice in the FEDERAL REGISTER announcing the integrated program and summarizing how an owner or authorized representative of a fishing vessel or non-fishing gear may register under that program or how registration will be achieved if no action is required on the part of the affected fisher. NMFS will make additional efforts to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear, who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must register for and receive an Authorization Certificate.

To register, owners must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner.

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted.

(iii) For a vessel fishery, vessel name, length, home port; U.S. Coast Guard documentation number or state registration number, and if applicable; state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year.

(v) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge."

(vi) A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(3) If a notice is published in the FEDERAL REGISTER announcing an integrated registration program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. If a fisher participating in a Category I or II fishery who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated registration program, the per-

son shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (b)(1)(vi) of this section.

(c) *Address.* Unless the granting and administration of authorizations under this part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907-586-7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; telephone: 206-526-4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 562-980-4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978-281-9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727-570-5312.

(d) *Issuance.* (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

(i) Submits a completed registration form and the required fee.

(ii) Has complied with the requirements of this section and §§229.6 and 229.7

(iii) Has submitted updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year.

(3) If a person receives a renewed Authorization Certificate or a decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt.

(e) *Authorization Certificate and decal requirements.* (1) If a decal has been

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issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(f) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(g) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official observer, or authorized otherwise by a scientific research permit that is in the possession of the operator.

(h) *Monitoring.* Authorization Certificate holders must comply with the ob-

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server or other monitoring requirements specified under § 229.7.

(i) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(j) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(k) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(l) *Expiration.* Authorization Certificates expire at the end of each calendar year.

[60 FR 45100, Aug. 30, 1995, as amended at 62 FR 46, Jan. 2, 1997; 64 FR 9086, Feb. 24, 1999]

## § 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official observer, or authorized otherwise by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(d).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering

personal safety, vessel owners and crew members engaged in commercial fishing operations must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

#### § 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any commercial fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

(1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;

(2) The name and address of the vessel owner or operator;

(3) The name and description of the fishery, including gear type and target species; and

(4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (a)(4) of this

section except, instead of providing the vessel name and vessel registration number, participants in nonvessel fisheries must provide the gear permit number.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

#### § 229.7 Monitoring of incidental mortalities and serious injuries.

(a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;

(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

(1) Record incidental mortality and injury, and bycatch of other nontarget species;

(2) Record numbers of marine mammals sighted; and

(3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for participants in Category I and II fisheries.* (1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS,

may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;

(vii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(viii) Not impairing or in any way interfering with the research or observations being carried out; and

(ix) Complying with other guidelines or regulations that NMFS may develop

to ensure the effective deployment and use of observers.

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) of this section, which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) *Observer requirements for participants in Category III fisheries.* (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of § 229.7(c).

(e) *Alternative observer program.* The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

**§ 229.8 Publication of List of Fisheries.**

(a) The Assistant Administrator will publish in the FEDERAL REGISTER a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that have been incidentally injured or killed by commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notification and opportunity for public comment.

(d) The revised final List of Fisheries will become effective no sooner than 30 days after publication in the FEDERAL REGISTER.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

**§ 229.9 Emergency regulations.**

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Shall be published in the FEDERAL REGISTER and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the FEDERAL REGISTER at an earlier

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date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]

### § 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on the vessel or is in possession of the operator of the vessel shall be subject to a penalty of not more than \$100.

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan or emergency regulation is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or failure to comply with requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107 and may subject them to the penalties of section 106 of the Act, which will result in suspen-

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sion, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or if the Authorization Certificate holder fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

### § 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information

obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216-100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216-100. Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

#### **§ 229.12 Consultation with the Secretary of the Interior.**

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

### **Subpart B—Takes of Endangered and Threatened Marine Mammals**

#### **§ 229.20 Issuance of permits.**

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the

Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the FEDERAL REGISTER of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the FEDERAL REGISTER a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 and for which determinations



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under the procedures of paragraph (b) of this section can be made.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notification and opportunity for public comment, the list of fisheries published in accordance with paragraph (b) of this section whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters.* This subpart does not apply to the taking of Southern (California) sea otters.

[60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9088, Feb. 24, 1999]

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### Subpart C—Take Reduction Plan Regulations and Emergency Regulations

#### § 229.30 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

[64 FR 9088, Feb. 24, 1999]

#### § 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders.* An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) *Pingers.* (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz ( $\pm 2$  kHz) sound at 132 dB ( $\pm 4$  dB) re 1 micropascal at 1 m, lasting 300 milliseconds ( $\pm 15$  milliseconds), and repeating every 4 seconds ( $\pm .2$  seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through (6) of this section.

(3) *Floatline.* Pingers shall be attached within 30 ft (9.14 m) of the

floatline and spaced no more than 300 ft (91.44 m) apart.

(4) *Leadline.* Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) *Staggered Configuration.* Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(7) The pingers must be operational and functioning at all times during deployment.

(8) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops.* After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998; 64 FR 3432, Jan. 22, 1999]

#### § 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots.

(2) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

#### Maine

A line connecting the following points (Quoddy Narrows/U.S.-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67' N. lat., 66°57.77' W. long. (R N "2", Quoddy Narrows)  
 44°48.64' N. lat., 66°56.43' W. long. (G "1" Whistle, West Quoddy Head)  
 44°47.36' N. lat., 66°59.25' W. long. (R N "2", Morton Ledge)  
 44°45.51' N. lat., 67°02.87' W. long. (R "28M" Whistle, Baileys Mistake)  
 44°37.70' N. lat., 67°09.75' W. long. (Obstruction, Southeast of Cutler)  
 44°27.77' N. lat., 67°32.86' W. long. (Freeman Rock, East of Great Wass Island)  
 44°25.74' N. lat., 67°38.39' W. long. (R "2SR" Bell, Seahorse Rock, West of Great Wass Island)  
 44°21.66' N. lat., 67°51.78' W. long. (R N "2", Petit Manan Island)  
 44°19.08' N. lat., 68°02.05' W. long. (R "2S" Bell, Schoodic Island)  
 44°13.55' N. lat., 68°10.71' W. long. (R "8BI" Whistle, Baker Island)  
 44°08.36' N. lat., 68°14.75' W. long. (Southern Point, Great Duck Island)

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43°59.36' N. lat., 68°37.95' W. long. (R "2"  
Bell, Roaring Bull Ledge, Isle Au  
Haut)  
43°59.83' N. lat., 68°50.06' W. long. (R  
"2A" Bell, Old Horse Ledge)  
43°56.72' N. lat., 69°04.89' W. long. (G  
"5TB" Bell, Two Bush Channel)  
43°50.28' N. lat., 69°18.86' W. long. (R "2  
OM" Whistle, Old Man Ledge)  
43°48.96' N. lat., 69°31.15' W. long. (GR C  
"PL", Pemaquid Ledge)  
43°43.64' N. lat., 69°37.58' W. long. (R  
"2BR" Bell, Bantam Rock)  
43°41.44' N. lat., 69°45.27' W. long. (R  
"20ML" Bell, Mile Ledge)  
43°36.04' N. lat., 70°03.98' W. long. (RG N  
"BS", Bulwark Shoal)  
43°31.94' N. lat., 70°08.68' W. long. (G "1",  
East Hue and Cry)  
43°27.63' N. lat., 70°17.48' W. long. (RW  
"WI" Whistle, Wood Island)  
43°20.23' N. lat., 70°23.64' W. long. (RW  
"CP" Whistle, Cape Porpoise)  
43°04.06' N. lat., 70°36.70' W. long. (R N  
"2MR", Murray Rock)  
43°02.93' N. lat., 70°41.47' W. long. (R  
"2KR" Whistle, Kittery Point)  
43°02.55' N. lat., 70°43.33' W. long.  
(Odiornes Pt., Portsmouth, New  
Hampshire)

### New Hampshire

A line from 42°53.691' N. lat., 70°48.516'  
W. long. to 42°53.516' N. lat., 70°48.748'  
W. long. (Hampton Harbor)  
A line from 42°59.986' N. lat., 70°44.654'  
W. long. to 42°59.956' N., 70°44.737' W.  
long. (Rye Harbor)

### Rhode Island

A line from 41°22.441' N. lat., 71°30.781'  
W. long. to 41°22.447' N. lat., 71°30.893'  
W. long. (Pt. Judith Pond Inlet)  
A line from 41°21.310' N. lat., 71°38.300'  
W. long. to 41°21.300' N. lat., 71°38.330'  
W. long. (Ninigret Pond Inlet)  
A line from 41°19.875' N. lat., 71°43.061'  
W. long. to 41°19.879' N. lat., 71°43.115'  
W. long. (Quonochontaug Pond Inlet)  
A line from 41°19.660' N. lat., 71°45.750'  
W. long. to 41°19.660' N. lat., 71°45.780'  
W. long. (Weekapaug Pond Inlet)

### New York

A line that follows the territorial sea  
baseline through Block Island Sound  
(Watch Hill Point, RI, to Montauk  
Point, NY)

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### South Carolina

A line from 32°34.717' N. lat., 80°08.565'  
W. long. to 32°34.686' N. lat., 80°08.642'  
W. long. (Captain Sams Inlet)

(4) *Sinking groundline exemption.* The  
fisheries regulated under this section  
are exempt from the requirement to  
have groundlines composed of sinking  
line if their groundline is at a depth  
equal to or greater than 280 fathoms  
(1,680 ft or 512.1 m) (as shown on NOAA  
charts 13200 (Georges Bank and Nan-  
tucket Shoals, 1:400,000), 12300 (NY Ap-  
proaches - Nantucket Shoals to Five  
Fathom Bank, 1:400,000), 12200 (Cape  
May to Cape Hatteras, 1:419,706), 11520  
(Cape Hatteras to Charleston, 1:432,720),  
11480 (Charleston Light to Cape Canav-  
eral, 1:449,659) and 11460 (Cape Canaveral  
to Key West, 1:466,940)).

(5) *Net panel weak link and anchoring  
exemption.* The anchored gillnet fish-  
eries regulated under this section are  
exempt from the requirement to install  
weak links in the net panel and anchor  
each end of the net string if the float-  
line is at a depth equal to or greater  
than 280 fathoms (1,680 ft or 512.1 m) (as  
shown on NOAA charts 13200 (Georges  
Bank and Nantucket Shoals, 1:400,000),  
12300 (NY Approaches—Nantucket  
Shoals to Five Fathom Bank, 1:400,000),  
12200 (Cape May to Cape Hatteras,  
1:419,706), 11520 (Cape Hatteras to  
Charleston, 1:432,720), 11480 (Charleston  
Light to Cape Canaveral, 1:449,659) and  
11460 (Cape Canaveral to Key West,  
1:466,940)).

(b) *Gear marking requirements.* (1)  
Specified gear consists of trap/pot gear  
and gillnet gear set in specified areas.

(2) *Specified areas.* The following  
areas are specified for gear marking  
purposes: Northern Inshore State Trap/  
Pot Waters, Cape Cod Bay Restricted  
Area, Stellwagen Bank/Jeffreys Ledge  
Restricted Area, Northern Nearshore  
Trap/Pot Waters Area, Great South  
Channel Restricted Trap/Pot Area,  
Great South Channel Restricted  
Gillnet Area, Great South Channel  
Sliver Restricted Area, Southern Near-  
shore Trap/Pot Waters Area, Offshore  
Trap/Pot Waters Area, Other Northeast  
Gillnet Waters Area, Mid/South Atlan-  
tic Gillnet Waters Area, Other South-  
east Gillnet Waters Area, Southeast

U.S. Restricted Area, and Southeast U.S. Monitoring Area.

(i) *Requirements for Shark Gillnet Gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters*—(A) *Color code.* Shark gillnet gear (i.e., gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with the appropriate color code to designate gear types and areas as follows:

(1) *Gear type code.* Shark gillnet gear must be marked with a green marking.

(2) *Area code.* Shark gillnet gear set in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with a blue marking.

(B) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i)(C) and (D) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) *Buoy line markings.* All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface) and midway along the length of the buoy line.

(D) *Net panel markings.* Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m), unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(ii) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(iii) of this section, unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(A) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(1) Trap/pot gear in the Northern Inshore State Trap/Pot Waters Area, the Cape Cod Bay Restricted Area, the Stellwagen Bank/Jeffreys Ledge Restricted Area, the Great South Channel Restricted Trap/Pot Area where it overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Northern Nearshore Trap/Pot Waters Area must be marked with a red marking.

(2) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(3) Trap/pot gear in the Great South Channel Restricted Trap/Pot Area where it overlaps with LMA 2/3 Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Offshore Trap/Pot Waters Area must be marked with a black marking.

(4) Anchored and drift gillnet gear in the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and Other Northeast Gillnet Waters Area must be marked with a green marking.

(5) Anchored and drift gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a blue marking.

(6) Gillnet gear (except gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the

Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a yellow marking.

(B) *Markings.* All specified gear in specified areas must be marked with one color code described in paragraph (b)(2)(ii)(A) of this section (which indicates the gear type and general area where the gear is set). Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long and be placed midway on the buoy line in the water column. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iii) *Requirements for all specified areas—(A) Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available upon request from the Regional Administrator, NMFS, Northeast Region upon request.

(3) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements in accordance

with paragraph (i) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to trap/pot gear in regulated waters—(1) Universal trap/pot gear requirements.* In addition to the area-specific measures listed in paragraphs (c)(2) through (c)(9) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed here.<sup>1</sup> The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Area-specific gear or vessel requirements during the winter restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the winter restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these

<sup>1</sup>Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

requirements in accordance with paragraph (i) of this section.

(A) *Winter restricted period.* The winter restricted period for the Cape Cod Bay Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (i) of this section.

(B) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The breaking strength of the weak links must not exceed 500 lb (226.8 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or

other flotation devices to groundlines is prohibited.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section.

(B) *Gear and vessel requirements—(1) State-water portion.* No person or vessel may fish with or possess trap/pot gear in the state-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Inshore State Trap/Pot Waters Area listed in paragraph (c)(6) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Federal-water portion.* No person or vessel may fish with or possess trap/pot gear in the Federal-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Trap/Pot Area—(i) Area.* The Great South Channel Restricted Trap/Pot Area consists of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a) unless

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the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period.* The spring restricted period for the Great South Channel Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the spring restricted period, no person or vessel may fish with, set, or possess trap/pot gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* The other restricted period for the Great South Channel Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the other restricted period, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the requirements listed for Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); the requirements listed for Offshore Trap/Pot Waters in paragraph (c)(5) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with LMA 2/3 Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); or unless the gear is stowed as specified in § 229.2. The As-

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sistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the requirements listed for the Northern Nearshore Trap/Pot Waters Area specified in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Offshore Trap/Pot<sup>2</sup> Waters Area—(i) Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area 2/3 Overlap and Area 3/4 Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area), and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°30' N. lat. south to 27°51' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long.

<sup>2</sup>Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

(Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Off-shore Trap/Pot Waters Area that over-

laps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Off-shore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Off-shore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may revise this period and



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these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(6) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area*. The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links*. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link

breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines*. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted for this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(C) [Reserved]

(7) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area*. The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links*. All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links,

rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(C) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(D) [Reserved]

(8) *Southern Nearshore<sup>3</sup> Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30' N lat. south to 27°51' N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear

in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed here, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish

<sup>3</sup>Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is

stowed as specified in § 229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(9) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines*. On or before April 5, 2009, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements*. From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Ad-

ministrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements*. From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements*. In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here.<sup>4</sup> The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface*. No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking line must be used between these objects.

(ii) *No wet storage of gear*. Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area*—(i) *Area*. The Cape Cod Bay Restricted Area consists of the Cape Cod Bay

<sup>4</sup>Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

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right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period*. The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure*. During the winter restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

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(3) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 42°10' N. lat./68°31' W. long., and 41°38' N. lat./68°13' W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (d)(4)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period*. The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure*. During the spring restricted period, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements*. During the other restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for

the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area*. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific require-

ments listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area*. The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links*. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by

NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations:

(1) *Configuration 1.* (i) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(iv) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(v) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(2) *Configuration 2.* (i) The weak link must be chosen from the following list

approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(ii) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(iii) One weak link must be placed between the floatline tie loops between net panels; and

(iv) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(v) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(vi) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(D) *Groundlines.* On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters

Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraphs (d)(6)(ii)(A) through (d)(6)(ii)(D) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(7) *Mid/South Atlantic Gillnet Waters*—

(i) *Area*. The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements*. From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted

Area as specified in paragraph (f)(2) applies.

(A) *Buoy line weak links*. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links*. The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at



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least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(3) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(7)(ii)(C)(1) and (d)(7)(ii)(C)(2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity

equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(D) *Groundlines.* On or before October 5, 2008, all groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(8) [Reserved]

(e) *Restrictions applicable to drift gillnet gear—(1) Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period—(A) Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the winter restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the FEDERAL REGISTER if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area during the other restricted period unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 42°10' N. lat./68°31' W. long., and 41°38' N. lat./68°13' W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (e)(3)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period.* The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the spring restricted period, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications,

or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 through March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N. lat./69°02' W. long., 41°43.5' N. lat./69°36.3' W. long., 41°40' N. lat./69°45' W. long., and 41°00' N. lat./69°05' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in

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the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70°00' W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Other Northeast Gillnet Waters Area—(i) Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph

(a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §§ 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Mid/South Atlantic Gillnet Waters Area—(i) Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30' W. long. south to

36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. During that time, no person may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(7) [Reserved]

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area.* The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north, unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section:

| Point       | N. lat. | W. long. |
|-------------|---------|----------|
| SERA1 ..... | 27°51'  | (1)      |
| SERA2 ..... | 27°51'  | 80°00'   |
| SERA3 ..... | 32°00'  | 80°00'   |
| SERA4 ..... | 32°36'  | 78°52'   |

| Point       | N. lat. | W. long. |
|-------------|---------|----------|
| SERA5 ..... | 32°51'  | 78°36'   |
| SERA6 ..... | 33°15'  | 78°24'   |
| SERA7 ..... | 33°27'  | 78°04'   |
| SERA8 ..... | (2)     | 78°33.9' |

<sup>1</sup> Florida shoreline.

<sup>2</sup> South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N.* The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S.* The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions*—(i) *Restricted periods.* The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i) of this section.

(ii) *Closure for gillnets.* (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(iii) of this section and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

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(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00' N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4 <sup>7</sup>/<sub>8</sub> inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period be-

gins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid-South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) [Reserved]

(g) *Restrictions applicable to the Other Southeast Gillnet Waters Area—(1) Area.* The Other Southeast Gillnet Waters Area consists of the area from 32°00' N. lat. (near Savannah, GA) south to 27°51' N. lat. for the Southeast Atlantic gillnet fishery, and from 32°00' N. lat. south to 26°46.50' N. lat. (near West Palm Beach, FL) for the Southeastern U.S. Atlantic shark gillnet fishery, and

extending from 80°00' W. long. east to the eastern edge of the EEZ, for both the Southeast Atlantic gillnet and Southeastern U.S. Atlantic gillnet fisheries unless the Assistant Administrator changes this area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Other Southeast Gillnet Waters Area north of 29°00' N. lat. (near New Smyrna Beach, FL) from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the set restrictions listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Set restrictions.* All gillnets must comply with the following set restrictions:

(A) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(B) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area, except as provided in paragraph (g)(2) of this section, north of 29°00' N. lat. from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) [Reserved]

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area—(1) Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51' N. lat. (near Sebastian Inlet, FL) south to 26°46.50' N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00' W. long., unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2, and the person or vessel satisfies the vessel monitoring system and observer requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Vessel monitoring systems.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(ii) *At-sea observer coverage.* When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7. Any vessel that fails to carry an observer once selected is prohibited from fishing pursuant to 50 CFR part 635.

(iii) [Reserved]

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

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(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the FEDERAL REGISTER if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) *Seasonal Area Management (SAM) Program.* Until October 6, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Sliver

Restricted Area (May 1 through July 31), Great South Channel Restricted Trap/Pot Area (July 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area (anchored gillnet and trap/pot area) found at § 229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (i)(3)(i)(A) and (i)(3)(ii)(A) of this section, which overlay the previously mentioned areas, provided the gear or vessel complies with the requirements specified in paragraphs (i)(3)(i)(B) and (i)(3)(ii)(B) of this section during the times specified in those paragraphs. These requirements are in addition to requirements found in § 229.32 (b)–(d). The requirements in (i)(3)(i)(B) and (i)(3)(ii)(B) of this section supercede requirements found at § 229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. A copy of a chart depicting these areas is available upon request from the Regional Administrator, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930.

(i) *SAM West—(A) Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

| Point                                          | N. lat.  | W. long |
|------------------------------------------------|----------|---------|
| 1W .....                                       | 42°30'   | 70°30'  |
| 2W .....                                       | 42°30'   | 69°24'  |
| 3W .....                                       | 41°48.9' | 69°24'  |
| 4W .....                                       | 41°40'   | 69°45'  |
| 5W .....                                       | 41°40'   | 69°57'  |
| and along the eastern shoreline of Cape Cod to |          |         |
| 6W .....                                       | 42°04.8' | 70°10'  |
| 7W .....                                       | 42°12'   | 70°15'  |
| 8W .....                                       | 42°12'   | 70°30'  |

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from March 1 through April 30, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM West unless that gear complies with the following gear modifications, or unless the gear is stowed as specified in § 229.2.

(1) *Anchored gillnet gear*—(i) *Groundlines*. All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines*. All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Buoy line weak links*. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible that has a maximum breaking strength of 1,100 lb (499.0 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) *Net panel weak links*. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(1) or (d)(6)(ii)(B)(2) of this section.

(v) *Anchoring systems*. All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb

(10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(2) *Trap/pot gear*—(i) *Groundlines*. All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines*. All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters Areas, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2 and Outer Cape LMA only) buoy line weak links*. All buoys, flotation devices, and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 600 lb (272.2 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iv) *Offshore Trap/Pot Waters Area and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2/3 Overlap and LMA 3 only) buoy line weak links*. All buoys, flotation devices, and/or weights (except traps/pots, anchors,



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and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 1,500 lb (680.4 kg). The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(ii) *SAM East—(A) Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

### SAM EAST

| Point    | N. Lat. | W. Long. |
|----------|---------|----------|
| 1E ..... | 42°30'  | 69°45'   |
| 2E ..... | 42°30'  | 67°27'   |
| 3E ..... | 42°09'  | 67°08.4' |
| 4E ..... | 41°00'  | 69°05'   |
| 5E ..... | 41°40'  | 69°45'   |

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from May 1 through July 31, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM East unless that gear complies with the gear modifications found in paragraphs (i)(3)(i)(B)(I) and (i)(3)(i)(B)(2) of this section, or unless the gear is stowed as specified in § 229.2.

[72 FR 57181, Oct. 5, 2007, as amended at 73 FR 51241, Oct. 2, 2008]

## § 229.33 Harbor Porpoise Take Reduction Plan Regulations—New England.

(a) *Restrictions—(1) Northeast Closure Area—(i) Area restrictions.* From August

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15 through September 13, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Northeast Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Northeast Closure Area is bounded by straight lines connecting the following points in the order stated:

### NORTHEAST CLOSURE AREA

| Point     | N. Lat.        | W. Long.                |
|-----------|----------------|-------------------------|
| NE1 ..... | 44°27.3' ..... | 68°55.0' (ME shoreline) |
| 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 ..... | 44°45.8' ..... | 67°02.7' (ME shoreline) |

(2) *Mid-Coast Management Area—(i) Area restrictions.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Mid-Coast Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Mid-Coast Management Area is the area bounded by straight lines connecting the following points in the order stated:

### MID-COAST MANAGEMENT AREA

| Point     | N. Lat.        | W. Long.                |
|-----------|----------------|-------------------------|
| MC1 ..... | 42°30.0' ..... | 70°50.1' (MA shoreline) |
| MC2 ..... | 42°30.0' ..... | 70°15.0'                |
| MC3 ..... | 42°40.0' ..... | 70°15.0'                |
| MC4 ..... | 42°40.0' ..... | 70°00.0'                |
| MC5 ..... | 43°00.0' ..... | 70°00.0'                |
| MC6 ..... | 43°00.0' ..... | 69°30.0'                |
| MC7 ..... | 43°30.0' ..... | 69°30.0'                |
| MC8 ..... | 43°30.0' ..... | 69°00.0'                |
| MC9 ..... | 44°17.8' ..... | 69°00.0' (ME shoreline) |

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the western portion of the Mid-Coast Management Area (west of 70°15' W. long.) from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas combined exceeds the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(3) *Massachusetts Bay Management Area*—(i) *Area restrictions.* From November 1 through February 28/29 and from April 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area. These restrictions do not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Massachusetts Bay Management Area is bounded by straight lines connecting the following points in the order stated:

## MASSACHUSETTS BAY MANAGEMENT AREA

| Point     | N. Lat.        | W. Long.                |
|-----------|----------------|-------------------------|
| MB1 ..... | 42°30.0' ..... | 70°50.1' (MA shoreline) |
| MB2 ..... | 42°30.0' ..... | 70°30.0'                |
| MB3 ..... | 42°15.0' ..... | 70°30.0'                |
| MB4 ..... | 42°15.0' ..... | 70°00.0'                |
| MB5 ..... | 42°00.0' ..... | 70°00.0'                |
| MB6 ..... | 42°00.0' ..... | 70°01.2' (MA shoreline) |
| MB7 ..... | 42°00.0' ..... | 70°04.8' (MA shoreline) |
| MB8 ..... | 42°00.0' ..... | 70°42.2' (MA shoreline) |

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close a portion of the Massachusetts Bay Management Area (north of 42°15' N. lat.) from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Massachusetts Bay, Mid-Coast, and Stellwagen Bank Management Areas combined exceeds the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

(4) *Stellwagen Bank Management Area*—(i) *Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Stellwagen Bank Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Stellwagen Bank Management Area is bounded by straight lines connecting the following points in the order stated:

## STELLWAGEN BANK MANAGEMENT AREA

| Point     | N. Lat.        | W. Long. |
|-----------|----------------|----------|
| SB1 ..... | 42°30.0' ..... | 70°30.0' |
| SB2 ..... | 42°30.0' ..... | 70°15.0' |
| SB3 ..... | 42°15.0' ..... | 70°15.0' |
| SB4 ..... | 42°15.0' ..... | 70°30.0' |
| SB1 ..... | 42°30.0' ..... | 70°30.0' |

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the Stellwagen Bank Management Area from October 1 through November 30 annually by incorporating it into the Coastal Gulf of Maine Closure Area if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Stellwagen Bank, Mid-Coast, and Massachusetts Bay Management Areas combined exceeds the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings.

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(5) *Southern New England Management Area*—(i) *Area restrictions*. From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Southern New England Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Southern New England Management Area is bounded by straight lines connecting the following points in the order stated:

### SOUTHERN NEW ENGLAND MANAGEMENT AREA

| Point      | N. Lat.                                      | W. Long.                |
|------------|----------------------------------------------|-------------------------|
| SNE1 ..... | Western boundary as specified <sup>1</sup> . |                         |
| SNE2 ..... | 40°00.0'                                     | 72°30.0'                |
| SNE3 ..... | 40°00.0'                                     | 69°30.0'                |
| SNE4 ..... | 42°15.0'                                     | 69°30.0'                |
| SNE5 ..... | 42°15.0'                                     | 70°00.0'                |
| SNE6 ..... | 41°58.3'                                     | 70°00.0' (MA shoreline) |

<sup>1</sup> Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30.0' W. long.

(iii) *Closing procedures*. According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close two areas (Cape Cod South Expansion Closure Area and Eastern Cape Cod Closure Area) within the Southern New England Management Area from February 1 through April 30 annually if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Southern New England Management Area exceeds the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings.

(6) *Cape Cod South Closure Area*—(i) *Area restrictions*. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Closure Area. This prohibition does not

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apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Cape Cod South Closure Area is bounded by straight lines connecting the following points in the order stated:

### CAPE COD SOUTH CLOSURE AREA

| Point      | N. Lat.  | W. Long.                |
|------------|----------|-------------------------|
| CCS1 ..... | 41°19.6' | 71°45.0' (RI shoreline) |
| CCS2 ..... | 40°40.0' | 71°45.0'                |
| CCS3 ..... | 40°40.0' | 70°30.0'                |
| CCS4 ..... | 41°20.9' | 70°30.0'                |
| CCS5 ..... | 41°23.1' | 70°30.0'                |
| CCS6 ..... | 41°33.1' | 70°30.0' (MA shoreline) |

(iii) *Closing procedures*. According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close the Cape Cod South Closure Area and an area to its south (Cape Cod South Expansion Closure Area) from February 1 through April 30 annually if, after two full, consecutive management seasons, the average observed bycatch rate of harbor porpoises for the Southern New England Management Area exceeds the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings.

(7) *Offshore Management Area*—(i) *Area restrictions*. From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Offshore Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Offshore Management Area is bounded by straight lines connecting the following points in the order stated:

### OFFSHORE MANAGEMENT AREA

| Point      | N. Lat.  | W. Long.                |
|------------|----------|-------------------------|
| OFS1 ..... | 42°50.0' | 69°30.0'                |
| OFS2 ..... | 43°10.0' | 69°10.0'                |
| OFS3 ..... | 43°10.0' | 67°40.0'                |
| OFS4 ..... | 43°05.8' | 67°40.0' (EEZ boundary) |

## OFFSHORE MANAGEMENT AREA—Continued

| Point      | N. Lat.        | W. Long.                     |
|------------|----------------|------------------------------|
| OFS5 ..... | 42°53.1' ..... | 67°44.5' (EEZ bound-<br>ary) |
| OFS6 ..... | 42°47.3' ..... | 67°40.0' (EEZ bound-<br>ary) |
| OFS7 ..... | 42°10.0' ..... | 67°40.0'                     |
| OFS8 ..... | 42°10.0' ..... | 69°30.0'                     |
| OFS1 ..... | 42°50.0' ..... | 69°30.0'                     |

(8) *Cashes Ledge Closure Area—(i) Area restrictions.* During the month of February, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cashes Ledge Closure Area is bounded by straight lines connecting the following points in the order stated:

## CASHES LEDGE CLOSURE AREA

| Point     | N. Lat.        | W. Long. |
|-----------|----------------|----------|
| CL1 ..... | 42°30.0' ..... | 69°00.0' |
| CL2 ..... | 42°30.0' ..... | 68°30.0' |
| CL3 ..... | 43°00.0' ..... | 68°30.0' |
| CL4 ..... | 43°00.0' ..... | 69°00.0' |
| CL1 ..... | 42°30.0' ..... | 69°00.0' |

(b) *Pingers—(1) Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (plus or minus 2 kHz) sound at 132 dB (plus or minus 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (plus or minus 15 milliseconds), and repeating every 4 seconds (plus or minus 0.2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at each end of a string of gillnets and at the bridle of every net, or every 300 feet (91.4 m or 50 fathoms), whichever is closer.

(c) *Pinger training and authorization.* The operator of a vessel may not fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in closed areas where pingers are required as specified under paragraph (b) of this section, un-

less the operator has satisfactorily received pinger training and possesses and retains on board the vessel a valid pinger training authorization issued by NMFS.

(d) *Annual review for consequence area actions—(1) Coastal Gulf of Maine Closure Area—(i) Establishment.* If, after two full, consecutive management seasons, the calculated average observed bycatch rate of the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas exceeds the target bycatch rate of 0.031 harbor porpoises per metric tons of landings, the Coastal Gulf of Maine Closure Area shall be established.

(ii) *Restrictions.* From October 1 through November 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Coastal Gulf of Maine Closure Area. This prohibition will not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When the area is open to fishing, the requirements of the Mid-Coast (as described in paragraph (a)(2) of this section), Massachusetts Bay (as described in paragraph (a)(3) of this section), and Stellwagen Bank (as described in paragraph (a)(4) of this section) Management Areas will remain in effect.

(iii) *Area boundaries.* The Coastal Gulf of Maine Closure Area is bounded by straight lines connecting the following points in the order stated:

## COASTAL GULF OF MAINE CLOSURE AREA

| Point      | N. Lat.        | W. Long.                     |
|------------|----------------|------------------------------|
| CGM1 ..... | 43°33.0' ..... | 70°15.0' (ME shore-<br>line) |
| CGM2 ..... | 42°15.0' ..... | 70°15.0'                     |
| CGM3 ..... | 42°15.0' ..... | 70°46.0' (MA shore-<br>line) |

(2) *Cape Cod South Expansion and Eastern Cape Cod Closure Areas—(i) Establishment.* If, after two full, consecutive management seasons, the calculated average observed bycatch rate of the Southern New England Management Area exceeds the target bycatch rate of 0.023 harbor porpoises per metric tons of landings, the Cape Cod

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South Expansion Closure Area and the Eastern Cape Cod Closure Area shall be established.

(ii) *Restrictions.* From February 1 through April 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area. This prohibition will not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When the areas are open to fishing, the requirements of the Southern New England Management Area, as described in paragraph (a)(5) of this section, will remain in effect.

(iii) *Area boundaries.* (A) The Cape Cod South Expansion Closure Area is bounded by straight lines connecting the following points in the order stated:

CAPE COD SOUTH EXPANSION CLOSURE AREA

| Point       | N. Lat.        | W. Long.                |
|-------------|----------------|-------------------------|
| CCSE1 ..... | 41°19.6' ..... | 71°45.0' (RI shoreline) |
| CCSE2 ..... | 40°00.0' ..... | 71°45.0'                |
| CCSE3 ..... | 40°00.0' ..... | 70°00.0'                |
| CCSE4 ..... | 40°30.0' ..... | 70°00.0'                |
| CCSE5 ..... | 40°30.0' ..... | 70°30.0'                |
| CCSE6 ..... | 41°20.9' ..... | 70°30.0'                |
| CCSE7 ..... | 41°23.1' ..... | 70°30.0'                |
| CCSE8 ..... | 41°33.1' ..... | 70°30.0' (MA shoreline) |

(B) The Eastern Cape Cod Closure Area is bounded by straight lines connecting the following points in the order stated:

EASTERN CAPE COD CLOSURE AREA

| Point      | N. Lat.        | W. Long.                |
|------------|----------------|-------------------------|
| ECC1 ..... | 41°58.3' ..... | 70°00.0' (MA shoreline) |
| ECC2 ..... | 42°15.0' ..... | 70°00.0'                |
| ECC3 ..... | 42°15.0' ..... | 69°30.0'                |
| ECC4 ..... | 41°40.0' ..... | 69°30.0'                |
| ECC5 ..... | 41°40.0' ..... | 69°56.8' (MA shoreline) |

(3) *Notification.* Upon determining that establishing a consequence closure area as described in paragraphs (d)(1) and (d)(2) of this section is necessary, NMFS will notify, in advance of the closure, the Harbor Porpoise Take Reduction Team and gillnet permit hold-

ers through mail notification. NMFS will also publish notification in the FEDERAL REGISTER and post information on the Harbor Porpoise Take Reduction Plan Web site related to the establishment of the closure area(s).

(4) If any or all of the closure areas discussed in paragraphs (d)(1) and (d)(2) are implemented, NMFS will monitor harbor porpoise bycatch rates throughout the New England region. The provisions set forth in paragraphs (d)(1) and (d)(2) shall remain in effect each year after implementation until bycatch levels approach a zero mortality and serious injury rate (ZMRG), or until NMFS, in collaboration with the Harbor Porpoise Take Reduction Team, develops and implements new measures.

(e) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS's existing permit application process, administered by NMFS.

(f) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if:

(1) NMFS determines that pinger operating effectiveness in the commercial gillnet fishery is inadequate to reduce bycatch below the stock's PBR level; or

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[75 FR 7396, Feb. 19, 2010]

§ 229.34 Harbor Porpoise Take Reduction Plan Regulations—Mid-Atlantic.

(a)(1) *Regulated waters.* The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30' W. long. at the southern coast of Long Island, NY at 40°50.1' N. lat. and on the south by the NC/SC border (33°51.1' N. lat.), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations within this section are not applicable

to waters landward of the first bridge over any embayment, harbor, or inlet, or to waters landward of the following lines:

**New York**

40°45.70' N., 72°45.15' W. to 40°45.72' N.,  
72°45.30' W. (Moriches Bay Inlet)  
40°37.32' N., 73°18.40' W. to 40°38.00' N.,  
73°18.56' W. (Fire Island Inlet)  
40°34.40' N., 73°34.55' W. to 40°35.08' N.,  
73°35.22' W. (Jones Inlet)

**New Jersey/Delaware**

39°45.90' N., 74°05.90' W. to 39°45.15' N.,  
74°06.20' W. (Barnegat Inlet)  
39°30.70' N., 74°16.70' W. to 39°26.30' N.,  
74°19.75' W. (Beach Haven to Brigantine Inlet)  
38°56.20' N., 74°51.70' W. to 38°56.20' N.,  
74°51.90' W. (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

**Maryland/Virginia**

38°19.48' N., 75°05.10' W. to 38°19.35' N.,  
75°05.25' W. (Ocean City Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)

37°11.10' N., 75°49.30' W. to 37°10.65' N.,  
75°49.60' W. (Little Inlet)  
37°07.00' N., 75°53.75' W. to 37°05.30' N.,  
75°56' W. (Smith Island Inlet)

**North Carolina**

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Restrictions*—(1) *Waters off New Jersey Management Area*. The Waters off New Jersey Management Area is bounded by straight lines connecting the following points in the order stated:

**WATERS OFF NEW JERSEY MANAGEMENT AREA**

| Point      | N. Lat.        | W. Long.                |
|------------|----------------|-------------------------|
| WNJ1 ..... | 40°50.1' ..... | 72°30.0' (NY shoreline) |
| WNJ2 ..... | 38°47.0' ..... | 72°30.0'                |
| WNJ3 ..... | 38°47.0' ..... | 75°05.0' (DE shoreline) |

(i) *Closure*. From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Waters off New Jersey Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear*. From January 1 through April 30, except during April 1 through April 20, as described in paragraph (b)(1)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Waters off New Jersey Management Area, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Waters off New Jersey Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length*. The floatline is not more than 4,800 ft (1,463.0 m).

(B) *Twine size*. The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets*. Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets*. The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel, or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string*. The total number of nets or net panels in a net string does not exceed 16.

(F) *Tie-down system*. The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length

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from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Waters off New Jersey Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(1)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(2) *Mudhole North Management Area.* The Mudhole North Management Area is bounded by straight lines connecting the following points in the order stated:

### MUDHOLE NORTH MANAGEMENT AREA

| Point     | N. Lat.        | W. Long.                |
|-----------|----------------|-------------------------|
| MN1 ..... | 40°28.1' ..... | 74°00.0' (NJ shoreline) |
| MN2 ..... | 40°30.0' ..... | 74°00.0'                |
| MN3 ..... | 40°30.0' ..... | 73°20.0'                |
| MN4 ..... | 40°05.0' ..... | 73°20.0'                |
| MN5 ..... | 40°05.0' ..... | 74°02.0' (NJ shoreline) |

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear from the Mudhole North Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole North Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 and April 1 through April 20 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole North Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length

from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole North Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described in paragraphs (b)(2)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(3) *Mudhole South Management Area.* The Mudhole South Management Area is bounded by straight lines connecting the following points in the order stated:

MUDHOLE SOUTH MANAGEMENT AREA

| Point     | N. Lat.        | W. Long. |
|-----------|----------------|----------|
| MS1 ..... | 40°05.0' ..... | 73°31.0' |
| MS2 ..... | 40°05.0' ..... | 73°00.0' |
| MS3 ..... | 39°51.0' ..... | 73°00.0' |
| MS4 ..... | 39°51.0' ..... | 73°31.0' |
| MS1 ..... | 40°05.0' ..... | 73°31.0' |

(i) *Closures.* From February 1 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear in the Mudhole South Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole South Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 1 through March 15 and April 1 through April 20 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole South Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the



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floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30 of each year, except during February 1 through March 15 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Mudhole South Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described in paragraphs (b)(3)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(4) *Southern Mid-Atlantic Management Area.* The Southern Mid-Atlantic Management Area is bounded by straight lines connecting the following points in the order stated:

SOUTHERN MID-ATLANTIC MANAGEMENT AREA

| Point      | N. Lat.        | W. Long.                |
|------------|----------------|-------------------------|
| SMA1 ..... | 38°47.0' ..... | 75°05.0' (DE shoreline) |
| SMA2 ..... | 38°47.0' ..... | 72°30.0'                |
| SMA3 ..... | 33°51.1' ..... | 72°30.0'                |
| SMA4 ..... | 33°51.1' ..... | 78°32.5' (NC/SC border) |

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Southern Mid-Atlantic Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From February 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(4)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(ii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Southern Mid-Atlantic Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(ii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m) in length.

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From

February 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(iii)(A) through (F) of this section. During this period, no vessel may enter or remain in the Southern Mid-Atlantic Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described in paragraphs (b)(4)(iii)(A) through (F) of this section, or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is no longer than 2,118 ft (645.6 m).

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 7.

(F) *Tie-down system.* Tie-downs are prohibited.

(c) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process, administered by NMFS.

(d) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the FEDERAL REGISTER if NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications are not reducing bycatch to below the stock's PBR level.

[75 FR 7399, Feb. 19, 2010]

#### § 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan to reduce incidental mortality and serious injury of the western North Atlantic coastal bottlenose dolphin stock in specific Category I and Category II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are identified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) *Definitions.* In addition to the definitions contained in the Act, § 216.3 and § 229.2 of this chapter, the terms defined in this section shall have the following definitions, even if a contrary definition exists in the Act, § 216.3, or § 229.2:

*Beach* means landward of and including the mean low water line.

*Beach/water interface* means the mean low water line.

*Large mesh gillnet* means a gillnet constructed with a mesh size greater than or equal to 7-inches (17.8 cm) stretched mesh.

*Medium mesh gillnet* means a gillnet constructed with a mesh size of greater than 5-inches (12.7 cm) to less than 7-inches (17.8 cm) stretched mesh.

*New Jersey, Delaware, and Maryland State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 40° 30' N. (New York/New Jersey border at the coast) and on the south by 38° 01.6' N. (Maryland/Virginia border at the coast).

*Night* means any time between one hour after sunset and one hour prior to sunrise.

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*Northern North Carolina State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 36° 33' N. (Virginia/North Carolina border at the coast) and on the south by 34° 35.4' N. (Cape Lookout, North Carolina).

*Northern Virginia State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 38° 01.6' N. (Virginia/Maryland border at the coast) and on the south by 37° 07.23' N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth).

*Small mesh gillnet* means a gillnet constructed with a mesh size of less than or equal to 5-inches (12.7 cm) stretched mesh.

*South Carolina, Georgia, and Florida waters* means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, between 33° 52' N. (North Carolina/South Carolina border at the coast) and the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

*Southern North Carolina State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34° 35.4' N. (Cape Lookout, North Carolina) and on the south by 33° 52' N. (North Carolina/South Carolina border at the coast).

*Southern Virginia State waters* means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 37° 07.23' N. (Cape Charles Light on Smith Island in the Chesapeake Bay mouth) and on the south by 36° 33' N. (Virginia/North Carolina border at the coast).

(c) *Regulated waters*. The regulations in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except for the waters identified in § 229.34(a)(2), with the following modification and addition.

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From Chincoteague to Ship Shoal Inlet in Virginia (37° 52' N. 75° 24.30' W. to 37° 11.90' N. 75° 48.30' W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(d) *Regional management measures*—(1) *New Jersey, Delaware, and Maryland State waters*—(i) *Medium and large mesh*. From June 1 through October 31, in New Jersey, Delaware, and Maryland State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(2) *Virginia state waters*—(i) *Medium and large mesh*. From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(3) *Southern Virginia State waters*—(i) *Large mesh gillnets*. From November 1 through December 31, in Southern Virginia State waters, no person may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night.

(ii) [Reserved]

(4) *Northern North Carolina State waters*—(i) *Small mesh gillnets*. From May 1 through October 31, in Northern North Carolina State waters, no person may fish with any small mesh gillnet gear longer than 1,000 feet (304.8 m).

(ii) *Medium mesh gillnets*. From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish

with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(iii) *Large mesh gillnets.* (A) From April 15 through December 15, in Northern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Northern North Carolina State waters, no person may fish with any large mesh gillnet without tie-downs at night.

(5) *Southern North Carolina State waters—(i) Medium Mesh Gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

(ii) *Large mesh gillnets.* (A) From April 15 through December 15, in Southern North Carolina State waters, no person may fish with any large mesh gillnet.

(B) From December 16 through April 14 of the following year, in Southern North Carolina State waters, no person may fish, possess on board unless stowed, or fail to remove from the water, any large mesh gillnet at night.

(6) *South Carolina, Georgia, and Florida waters—(i) Gillnets.* Year-round, in South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical miles (0.46 km) of the closest portion of the gillnet. Gear shall be removed from the water and stowed on board the vessel before the vessel returns to port.

(ii) [Reserved]

[71 FR 24796, Apr. 26, 2006, as amended at 73 FR 77533, Dec. 19, 2008]

#### § 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope.* The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of long-finned and short-finned pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery off the U.S. east coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

(1) *Persons subject to this section.* The regulations in this section apply to the owner and operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under § 635.4 of this title and that has pelagic longline gear onboard as described under § 635.21(c) of this title.

(2) *Geographic scope.* The geographic scope of the PLTRP is the Atlantic Federal EEZ off the U.S. East Coast. The regulations specified in paragraphs (b) through (d) of this section apply throughout the Atlantic Federal EEZ off the U.S. East Coast. The regulation specified in paragraph (e) of this section applies to all U.S. Atlantic pelagic longline vessels operating in the EEZ portion of the Mid-Atlantic Bight.

(b) *Definitions.* In addition to the definitions contained in the MMPA and §§ 216.3 and 229.2 of this chapter, the following definitions apply.

(1) *Cape Hatteras Special Research Area (CHSRA)* means all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long.

(2) *Mid-Atlantic Bight* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

(3) *Observer* means an individual authorized by NMFS, or a designated contractor, placed aboard a commercial fishing vessel to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data; to collect biological specimens; and to perform other scientific investigations.

(4) *Pelagic longline* has the same meaning as in § 635.2 of this title.

(c) *Marine Mammal Handling and Release Placard.* The placard, "Marine Mammal Handling/Release Guidelines: A Quick Reference for Atlantic Pelagic Longline Gear," must be kept posted inside the wheelhouse and on the working deck. You may contact the NMFS Southeast Regional Office at (727) 824-5312 to request additional copies of the placard.

(d) *CHSRA—(1) Special observer requirements.* If you deploy or fish with

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pelagic longline gear in the CHSRA, or intend to do so, you must call NMFS Southeast Fisheries Science Center (SEFSC), 1-888-254-2558, at least 48 hours, but no more than 96 hours, prior to embarking on your fishing trip. This requirement is in addition to any existing selection and notification requirement for observer coverage by the Pelagic Observer Program. If, upon calling in, you are informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then you need not wait until your stated date and time of departure and may depart on your fishing trip immediately. If you are assigned an observer, you must take the observer during that fishing trip. If you do not take the observer, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip. You must comply with all provisions of § 229.7, Monitoring of incidental mortalities and serious injuries. In addition, all provisions of 50 CFR 600.746, Observers, apply. No waivers will be granted under § 229.7(c)(3) or § 600.746(f). A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from deploying or fishing with pelagic longline gear in the CHSRA.

(2) *Special research requirements.* In addition to observing normal fishing activities, observers may conduct additional scientific investigations aboard your vessel designed to support the goals of the PLTRP. The observer will inform you of the specific additional investigations that may be conducted during your trip. An observer may direct you to modify your fishing behavior, gear, or both. Instead of carrying an observer, you may be required to

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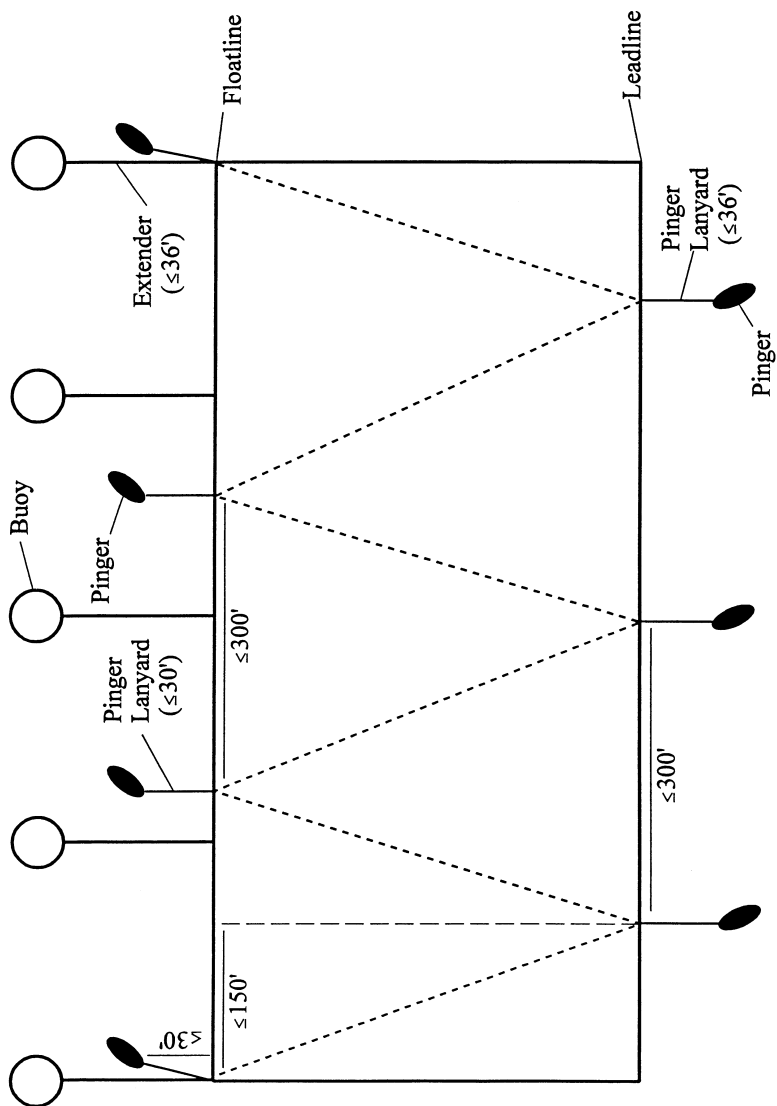
carry and deploy gear provided by NMFS or an observer or modify your fishing practices. By calling in per § 229.36(d)(1), you are agreeing to take an observer. You are also acknowledging you are both willing and able to participate in research, as per this paragraph, in the CHSRA consistent with the PLTRP without any compensation. If you are assigned any special research requirements, you must participate in the research for the duration of the assignment. If you do not participate in the research, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the CHSRA without meeting the observer and research requirements specified in § 229.36(d)(1) and § 229.36(d)(2). For the purpose of this paragraph, transit means non-stop progression through the area. Pelagic longline gear is appropriately stowed if all gangions, hooks, and buoys are disconnected from the mainline; hooks are not baited; longline left on the drum is covered with a tarp; and all other gear components are either stowed below deck or secured on deck and covered with a tarp.

(e) *Gear restrictions.* No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic longline exceeding 20 nm (37.04 km) in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

[74 FR 23358, May 19, 2009]

Figure 1. Drift Gillnet Pinger Configuration and Extender Requirements



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## SUBCHAPTER D—WHALING

### PART 230—WHALING PROVISIONS

Sec.

230.1 Purpose and scope.

230.2 Definitions.

230.3 General prohibitions.

230.4 Aboriginal subsistence whaling.

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230.6 Quotas and other restrictions.

230.7 Salvage of stinkers.

230.8 Reporting by whaling captains.

AUTHORITY: 16 U.S.C. 916 *et seq.*

SOURCE: 61 FR 29631, June 11, 1996, unless otherwise noted.

#### § 230.1 Purpose and scope.

The purpose of the regulations in this part is to implement the Whaling Convention Act (16 U.S.C. 916 *et seq.*) by prohibiting whaling except for aboriginal subsistence whaling allowed by the International Whaling Commission. Provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) also pertain to human interactions with whales. Rules elsewhere in this chapter govern such topics as scientific research permits, and incidental take and harassment of marine mammals.

#### § 230.2 Definitions.

*Aboriginal subsistence whaling* means whaling authorized by paragraph 13 of the Schedule annexed to and constituting a part of the Convention.

*Assistant Administrator* means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

*Authorized officer* means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Whaling Convention Act; or

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

*Calf* means any whale less than 1 year old or having milk in its stomach.

*Commission* means the International Whaling Commission established by article III of the Convention.

*Convention* means the International Convention for the Regulation of Whaling signed at Washington on December 2, 1946.

*Cooperative agreement* means a written agreement between the National Oceanic and Atmospheric Administration and a Native American whaling organization for the cooperative management of aboriginal subsistence whaling operations.

*Landing* means bringing a whale or any parts thereof onto the ice or land in the course of whaling operations.

*Native American whaling organization* means an entity recognized by the National Oceanic and Atmospheric Administration as representing and governing Native American whalers for the purposes of cooperative management of aboriginal subsistence whaling.

*Regulations of the Commission* means the regulations in the Schedule annexed to and constituting a part of the Convention, as modified, revised, or amended by the Commission from time to time.

*Stinker* means a dead, unclaimed whale found upon a beach, stranded in shallow water, or floating at sea.

*Strike* means hitting a whale with a harpoon, lance, or explosive device.

*Wasteful manner* means a method of whaling that is not likely to result in the landing of a struck whale or that does not include all reasonable efforts to retrieve the whale.

*Whale products* means any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

*Whaling* means the scouting for, hunting, striking, killing, flensing, or landing of a whale, and the processing of whales or whale products.

*Whaling captain* or *captain* means any Native American who is authorized by a Native American whaling organization to be in charge of a vessel and whaling crew.

*Whaling crew* means those Native Americans under the control of a captain.

*Whaling village* means any U.S. village recognized by the Commission as having a cultural and/or subsistence need for whaling.

#### § 230.3 General prohibitions.

(a) No person shall engage in whaling in a manner that violates the Convention, any regulation of the Commission, or this part.

(b) No person shall engage in whaling without first having obtained a license or scientific research permit issued by the Assistant Administrator.

(c) No person shall ship, transport, purchase, sell, offer for sale, import, export, or possess any whale or whale products taken or processed in violation of the Convention, any regulation of the Commission, or this part, except as specified in § 230.4(f).

(d) No person shall fail to make, keep, submit, or furnish any record or report required of him/her by the Convention, any regulation of the Commission, or this part.

(e) No person shall refuse to permit any authorized officer to enforce the Convention, any regulation of the Commission, or this part.

#### § 230.4 Aboriginal subsistence whaling.

(a) No person shall engage in aboriginal subsistence whaling, except a whaling captain licensed pursuant to § 230.5 or a member of a whaling crew under the control of a licensed captain.

(b) No whaling captain shall engage in whaling that is not in accordance with the regulations of the Commission, this part, and the relevant cooperative agreement.

(c) No whaling captain shall engage in whaling for any calf or any whale accompanied by a calf.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in aboriginal subsistence whaling.

(f) No person may sell or offer for sale whale products from whales taken in an aboriginal subsistence hunt, except that authentic articles of Native handicrafts may be sold or offered for sale.

(g) No whaling captain shall continue to whale after:

(1) The quota set for his/her village by the relevant Native American whaling organization is reached;

(2) The license under which he/she is whaling is suspended as provided in § 230.5(b); or

(3) The whaling season for that species has been closed pursuant to § 230.6.

(h) No whaling captain shall claim domicile in more than one whaling village.

(i) No person may salvage a stinker without complying with the provisions of § 230.7.

(j) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart that does not bear a permanent distinctive mark identifying the captain as the owner thereof.

(k) No whaling captain shall engage in whaling in a wasteful manner.

#### § 230.5 Licenses for aboriginal subsistence whaling.

(a) A license is hereby issued to whaling captains identified by the relevant Native American whaling organization.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with the regulations in this part.

#### § 230.6 Quotas and other restrictions.

(a) Quotas for aboriginal subsistence whaling shall be set in accordance with the regulations of the Commission. Quotas shall be allocated to each whaling village or captain by the appropriate Native American whaling organization. The Assistant Administrator shall publish in the FEDERAL REGISTER, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the Commission. These quotas and restrictions shall also be incorporated in the relevant cooperative agreements.



## **§ 230.7**

(b) The relevant Native American whaling organization shall monitor the whale hunt and keep tally of the number of whales landed and struck. When a quota is reached, the organization shall declare the whaling season closed, and there shall be no further whaling under that quota during the calendar year. If the organization fails to close the whaling season after the quota has been reached, the Assistant Administrator may close it by filing notification in the FEDERAL REGISTER.

### **§ 230.7 Salvage of stinkers.**

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his/her representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He/she shall provide promptly to the Assistant Administrator or his/her representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly, unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

### **§ 230.8 Reporting by whaling captains.**

(a) The relevant Native American whaling organization shall require each whaling captain licensed pursuant to

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§ 230.5 to provide a written statement of his/her name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart.

(b) Each whaling captain shall provide to the relevant Native American whaling organization an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a whale and, where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing.

(2) The length (taken as the straight-line measurement from the tip of the upper jaw to the notch between the tail flukes) and the sex of the whales landed.

(3) The length and sex of a fetus, if present in a landed whale.

(4) An explanation of circumstances associated with the striking or attempted striking of any whale not landed.

(c) If the relevant Native American whaling organization fails to provide the National Marine Fisheries Service the required reports, the Assistant Administrator may require the reports to be submitted by the whaling captains directly to the National Marine Fisheries Service.

## **SUBCHAPTER E—TRANSPORTATION AND LABELING OF FISH OR WILDLIFE [RESERVED]**

## SUBCHAPTER F—AID TO FISHERIES

### PART 253—FISHERIES ASSISTANCE PROGRAMS

#### Subpart A—General

Sec.

253.1 Purpose.

#### Subpart B—Fisheries Finance Program

- 253.10 General definitions.
- 253.11 General FFP credit standards and requirements.
- 253.12 Credit application.
- 253.13 Initial investigation and approval.
- 253.14 Loan documents.
- 253.15 Recourse against other parties.
- 253.16 Actual cost.
- 253.17 Insurance.
- 253.18 Closing.
- 253.19 Dual-use CCF.
- 253.20 Fees.
- 253.21 Demand by guaranteed noteholder and payment.
- 253.22 Program operating guidelines.
- 253.23 Default and liquidation.
- 253.24 Enforcement violations and adverse actions.
- 253.25 Other administrative requirements.
- 253.26 Traditional loans.
- 253.27 IFQ financing.
- 253.28 Halibut sablefish IFQ loans.
- 253.29 CDQ loans.
- 253.30 Crab IFQ loans.
- 253.31–253.49 [Reserved]

#### Subpart C—Interjurisdictional Fisheries

- 253.50 Definitions.
- 253.51 Apportionment.
- 253.52 State projects.
- 253.53 Other funds.
- 253.54 Administrative requirements.

AUTHORITY: 46 U.S.C. 53701 and 16 U.S.C. 4101 *et seq.*

SOURCE: 75 FR 78623, Dec. 16, 2010, unless otherwise noted.

#### § 253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of this part governs the Fisheries Finance Program (FFP or the Program), which makes capacity neutral long-term direct fisheries and aquaculture loans. The FFP conducts all credit investigations, makes all credit determinations and holds and services all credit collateral.

(b) Subpart C of this part implements Public Law 99-659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) Promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) Promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the executive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

#### Subpart B—Fisheries Finance Program

##### § 253.10 General definitions.

The terms used in this subpart have the following meanings:

*Act* means Chapter 537 of Title 46 of the U.S. Code, (46 U.S.C. 53701–35), as may be amended from time to time.

*Actual cost* means the sum of all amounts for a project paid by an obligor (or related person), as well as all amounts that the Program determines the obligor will become obligated to pay, as such amounts are calculated by § 253.16.

*Applicant* means the individual or entity applying for a loan (the prospective obligor).

*Application* means the documents provided to or requested by NMFS from an applicant to apply for a loan.

*Application fee* means 0.5 percent of the dollar amount of financing requested.

*Approval in principle letter (AIP)* means a written communication from NMFS to the applicant expressing the

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agency's commitment to provide financing for a project, subject to all applicable regulatory and Program requirements and in accordance with the terms and conditions contained in the AIP.

*Aquaculture facility* means land, structures, appurtenances, laboratories, water craft built in the U.S., and any equipment used for the hatching, caring for, or growing fish, under controlled circumstances for commercial purposes, as well as the unloading, receiving, holding, processing, or distribution of such fish.

*Capital Construction Fund (CCF)*, as described under 46 U.S.C. 53501-17, allows owners of eligible vessels to reserve capital for replacement vessels, additional vessels, reconstruction of vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the fisheries of the United States.

*Captain* means a vessel operator or a vessel master.

*Charter fishing* means fishing from a vessel carrying a "passenger for hire," as defined in 46 U.S.C. 2101(21a), such passenger being engaged in recreational fishing, from whom consideration is provided as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

*Citizen* means a "citizen of the United States," as described in 46 U.S.C. 104, or an entity who is a citizen for the purpose of documenting a vessel in the coastwise trade under 46 U.S.C. 50501.

*Crewman* means any individual, other than a captain, a passenger for hire, or a fisheries observer working on a vessel that is engaged in fishing.

*Demand* means a noteholder's request that a debtor or guarantor pay a note's full principal and interest balance.

*Facility* means a fishery or an aquaculture facility.

*Fish* means finfish, mollusks, crustaceans and all other forms of aquatic animal and plant life, other than marine mammals and birds.

*Fisheries harvest authorization* means any transferable permit, license or

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other right, approval, or privilege to engage in fishing.

*Fishery facility* means land, land structures, water craft that do not engage in fishing, and equipment used for transporting, unloading, receiving, holding, processing, preserving, or distributing fish for commercial purposes (including any water craft used for charter fishing).

*Fishing* means:

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

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

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

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

(5) Fishing does not include any scientific research activity which is conducted by a scientific research vessel.

*Fishing industry* for the purposes of this part, means the broad sector of the national economy comprised of persons or entities that are engaged in or substantially associated with fishing, including aquaculture, charter operators, guides, harvesters, outfitters, processors, suppliers, among others, without regard to the location of their activity or whether they are engaged in fishing for wild stocks or aquaculture.

*Guarantee* means a guarantor's contractual promise to repay indebtedness if an obligor fails to repay as agreed.

*Guarantee fee* means one percent of a guaranteed note's average annual unpaid principal balance.

*Guaranteed note* means a promissory note from an obligor to a noteholder, the repayment of which the United States guarantees.

*IFQ* means Individual Fishing Quota, which is a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. IFQ does not include community development quotas.

*Noteholder* means a guaranteed note payee.

*Obligor* means a party primarily liable for payment of the principal of or

interest on an obligation, used interchangeably with the terms “note payor” or “notemaker.”

*Origination year* means the year in which an application for a loan is accepted for processing.

*Program* means the Fisheries Finance Program, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

*Project* means:

(1) The refinancing or construction of a new fishing vessel or the financing or refinancing of a fishery or aquaculture facility or the refurbishing or purchase of an existing vessel or facility, including, but not limited to, architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Program requires;

(2) The purchase or refinance of any limited access privilege, IFQ, fisheries access right, permit, or other fisheries harvest authorization, for which the actual cost of the purchase of such authorization would be eligible under the Act for direct loans;

(3) Activities (other than fishing capacity reduction, as set forth in part 600.1000 of this title) that assist in the transition to reduced fishing capacity;

(4) Technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety; or

(5) Any other activity that helps develop the U.S. fishing industry, including, but not limited to, measures designed or intended to improve a vessel's fuel efficiency, to increase fisheries exports, to develop an underutilized fishery, or to enhance financial stability, financial performance, growth, productivity, or any other business attribute related to fishing or fisheries.

*RAM* means the Restricted Access Management division in the Alaska Regional Office of NMFS or the office that undertakes the duties of this division to issue or manage quota shares.

*Refinancing* means newer debt that either replaces older debt or reim-

burses applicants for previous expenditures.

*Refinancing/assumption fee* means a one time fee assessed on the principal amount of an existing FFP note to be refinanced or assumed.

*Refurbishing* means any reconstruction, reconditioning, or other improvement of existing vessels or facilities, but does not include routine repairs or activities characterized as maintenance.

*Security documents* mean all documents related to the collateral securing the U.S. Note's repayment and all other assurances, undertakings, and contractual arrangements associated with financing or guarantees provided by NMFS.

*Underutilized fishery* means any stock of fish (a) harvested below its optimum yield or (b) limited to a level of harvest or cultivation below that corresponding to optimum yield by the lack of aggregate facilities.

*U.S.* means the United States of America and, for citizenship purposes, includes the fifty states, Commonwealth of Puerto Rico, American Samoa, the Territory of the U.S. Virgin Islands, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

*U.S. Note* means a promissory note payable by the obligor to the United States.

*Useful life* means the period during which project property will, as determined by the Program, remain economically productive.

*Vessel* means any vessel documented under U.S. law and used for fishing.

*Wise use* means the development, advancement, management, conservation, and protection of fishery resources, that is not inconsistent with the National Standards for Fishery Conservation and Management (16 U.S.C. 1851) and any other relevant criteria, as may be specified in applicable statutes, regulations, Fishery Management Plans, or NMFS guidance.

**§ 253.11 General FFP credit standards and requirements.**

(a) *Principal.* Unless explicitly stated otherwise in these regulations or applicable statutes, the amount of any loan may not exceed 80 percent of actual cost, as such term is described in § 253.16; provided that the Program may approve an amount that is less, in accordance with its credit determination.

(b) *Interest rate.* Each loan's annual interest rate will be 2 percent greater than the U.S. Department of Treasury's cost of borrowing public funds of an equivalent maturity at the time the loan closes.

(c) *Ability and experience requirements.* An obligor and the majority of its principals must demonstrate the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating the project property and protecting the Program's interest in the project.

(d) *Lending restrictions.* Unless it can document that unique or extraordinary circumstances exist, the Program will not provide financing:

(1) For venture capital purposes; or

(2) To an applicant who cannot document successful fishing industry ability and experience of a duration, degree, and nature that the Program deems necessary to successfully repay the requested loan.

(e) *Income and expense projections.* The Program, using conservative income and expense projections for the project property's operation, must determine that projected net earnings can service all debt, properly maintain the project property, and protect the Program's interest against risks of loss, including the industry's cyclical economics.

(f) *Working capital.* The Program must determine that a project has sufficient initial working capital to achieve net earnings projections, fund all foreseeable contingencies, and protect the Program's interest in the project. In making its determination, the Program will use a conservative assessment of an applicant's financial condition, and at the Program's discretion, some portion of projected working capital needs may be met by something other than current assets minus liabilities (i.e., by a line or letter of

credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(g) *Audited financial statements.* Audited financial statements will ordinarily be required for any obligor with large or financially complex operations, as determined by the program, whose financial condition the Program believes cannot be otherwise assessed with reasonable certainty.

(h) *Consultant services.* Expert consulting services may be necessary to help the Program assess a project's economic, technical, or financial feasibility. The Program will notify the applicant if an expert is required. The Program will select and employ the necessary consultant, but require the applicant to reimburse the Program for any fees charged by the consultant. In the event that an application requires expert consulting services, the loan will not be closed until the applicant fully reimburses the Program for the consulting fees. This cost may, at the Program's discretion, be included in the amount of the note. For a declined application, the Program may reimburse itself from the application fee as described in § 253.12, including any portion known as the commitment fee that could otherwise be refunded to the applicant.

(i) *Property inspections.* The Program may require adequate condition and valuation inspection of all property used as collateral as the basis for assessing the property's worth and suitability for lending. The Program may also require these at specified periods during the life of the loan. These must be conducted by competent and impartial inspectors acceptable to the Program. Inspection cost(s) will be at an applicant's expense. Those occurring before application approval may be included in actual cost, as actual cost is described in § 253.16.

(j) *Collateral.* The Program shall have first lien(s) on all primary project property pledged as collateral. The Program, at its discretion, may request additional collateral and will consider any additional collateral in its credit determinations.

(k) *No additional liens.* All primary project property pledged as collateral,

including any additional collateral, shall be free of additional liens, unless the Program, at the request of the applicant, expressly waives this requirement in writing.

(l) *General FFP credit standards apply.* Unless explicitly stated otherwise in these rules, all FFP direct lending is subject to the above general credit standards and requirements found in §§ 253.12 through 253.30. The Program may adjust collateral, guarantee and other requirements to reflect individual credit risks.

(m) *Adverse legal proceedings.* The Program, at its own discretion, may decline or hold in abeyance any loan approval or disbursement(s) to any applicant found to have outstanding lawsuits, citations, hearings, liabilities, appeals, sanctions or other pending actions whose negative outcome could significantly impact, in the opinion of the Program, the financial circumstances of the applicant.

#### **§ 253.12 Credit application.**

(a) *Applicant.* (1) An applicant must be a U.S. citizen and be eligible to document a vessel in the coastwise trade; and

(2) Only the legal title holder of project property, or its parent company (or the lessee of an appropriate long-term lease) may apply for a loan; and

(3) An applicant and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating, utilizing, or carrying out the project and protecting the Program's interest; and

(4) Applicants should apply to the appropriate NMFS Regional Financial Services Branch to be considered.

(b) *Application fee.* An application fee of 0.5 percent of the dollar amount of an application is due when the application is formally accepted. Upon submission, 50 percent of the application fee, known as the "filing fee," is non-refundable; the remainder, known as the "commitment fee," may be refunded if the Program declines an application or an applicant withdraws its application before the Program issues an AIP letter, as described in § 253.13(e).

The Program will not issue an AIP letter if any of the application fee remains unpaid. No portion of the application fee shall be refunded once the Program issues an AIP letter.

(c) *False statement.* A false statement on an application is grounds for denial or termination of funds, grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and an event of a security default.

#### **§ 253.13 Initial investigation and approval.**

(a) The Program shall undertake a due diligence investigation of every application it receives to determine if, in the Program's sole judgment, the application is both:

(1) Eligible for a loan because it meets applicable loan requirements; and

(2) Qualified for a loan because the project is deemed an acceptable credit risk.

(b) The Program will approve eligible and qualified applicants by evaluating the information obtained during the application and investigation process.

(c) Among other investigations, applicants may be subject to a background check, fisheries violations check and credit review. Background checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's honesty or financial integrity.

(d) The Program, at its own discretion, may decline or delay approval of any loans or disbursements to any applicant found to have outstanding citations, notices of violations, or other pending legal actions or unresolved claims.

(e) The Program may place any terms and conditions on such approvals that the Program, in its sole discretion, deems necessary and appropriate.

(f) *Credit decision.* (1) The Program shall issue to approved applicants an AIP letter, which shall describe the terms and conditions of the loan, including (but not limited to) loan amounts, maturities, additional collateral, repayment sources or guarantees.

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Such terms and conditions are at the Program's sole discretion and shall also be incorporated in security documents that the Program prepares. An applicant's non-acceptance of any terms and conditions may result in an applicant's disqualification.

(2) Any application the Program deems ineligible or unqualified will be declined.

## § 253.14 Loan documents.

(a) *U.S. Note.* (1) The U.S. Note will be in the form the Program prescribes.

(2) The U.S. Note evidences the obligor's indebtedness to the United States.

(i) For financing approved after October 11, 1996, the U.S. Note evidences the obligor's actual indebtedness to the U.S.; and

(ii) For financing originating before October 11, 1996, that continues to be associated with a Guaranteed Note, the U.S. Note shall evidence the obligor's actual indebtedness to the U.S. upon the Program's payment of any or all of the sums due under the Guaranteed Note or otherwise disbursed on the obligor's behalf.

(iii) The U.S. Note will, among other things, contain provisions to add to its principal balance all amounts the Program advances or incurs, including additional interest charges and costs incurred to protect its interest or accommodate the obligor.

(3) The U.S. Note shall be assignable by the Program, at its sole discretion.

(b) *Security documents.* (1) Each security document will be in the form the Program prescribes.

(2) The Program will, at a minimum, require the pledge of adequate collateral, generally in the form of a security interest or mortgage against all property associated with a project or security as otherwise required by the Program.

(3) The Program will require such other security as it deems necessary and appropriate, given the circumstances of each obligor and the project.

(4) The security documents will, among other things, contain provisions to secure the repayment of all additional amounts the Program advances or incurs to protect its interest or ac-

commodate the obligor, including additional interest charges and fees.

## § 253.15 Recourse against parties.

(a) *Form.* Recourse by borrowers or guarantors may be by a repayment guarantee, irrevocable letter of credit, additional tangible or intangible collateral, or other form acceptable to the Program.

(b) *Principals accountable.* The principal parties in interest, who ultimately stand most to benefit from the project, will ordinarily be held financially accountable for the project's performance. The Program may require recourse against:

(1) All major shareholders of a closely-held corporate obligor;

(2) The parent corporation of a subsidiary corporate obligor;

(3) The related business entities of the obligor if the Program determines that the obligor lacks substantial pledged assets other than the project property or is otherwise lacking in any credit factor required to approve the application;

(4) Any or all major limited partners;

(5) Non-obligor spouses of applicants or obligors in community property states; and/or

(6) Against any others it deems necessary to protect its interest.

(c) *Recourse against parties.* Should the Program determine that a secondary means of repayment from other sources is necessary (including the net worth of parties other than the obligor), the Program may require secured or unsecured recourse against any such secondary repayment sources.

(d) *Recourse unavailable.* Where appropriate recourse is unavailable, the conservatively projected net liquidating value of the obligor's assets (as such assets are pledged to the Program) must, in the Program's credit judgment, substantially exceed all projected Program exposure or other risks of loss.

## § 253.16 Actual cost.

Actual cost shall be determined as follows:

(a) The actual cost of a vessel shall be the sum of:

(1) The total cost of the project depreciated on a straight-line basis, over

the project property's useful life, using a 10-percent salvage value; and

(2) The current market value of appurtenant limited access privileges or transferable limited access privileges vested in the name of the obligor, the subject vessel or their owners, provided that such privileges are utilized by or aboard the subject vessel and will be pledged as collateral for the subject FFP financing.

(b) The actual cost of a facility shall be the sum of:

(1) The total cost of the project, not including land, depreciated on a straightline basis over the Project Property's useful life, using a 10-percent salvage value;

(2) The current market value of the land that will be pledged as collateral for the subject FFP financing, provided that such land is utilized by the facility; and

(3) The net present value of the payments due under a long term lease of land or marine use rights, provided that they meet the following requirements:

(i) The project property must be located at such leased space or directly use such marine use rights;

(ii) Such lease or marine use right must have a duration the Program deems sufficient; and

(iii) The lease or marine use right must be assigned to the Program such that the Program may foreclose and transfer such lease to another party.

(c) The actual cost of a transferable limited access privilege shall be determined as follows:

(1) For financing the purchase of limited access privileges, the actual cost shall be the purchase cost.

(2) For refinancing limited access privileges, the actual cost shall be the current market value.

(d) The actual cost of any Project that includes any combination of items described in paragraphs (a), (b) or (c) of this section shall be the sum of such calculations.

#### § 253.17 Insurance.

(a) All insurable collateral property and other risks shall be continuously insured so long as any balance of principal or interest on a Program loan or guarantee remains outstanding.

(b) Insurers must be acceptable to the Program.

(c) Insurance must be in such forms and amounts and against such risks the Program deems necessary to protect the United States' interest.

(d) Insurance must be endorsed to include the requirements the Program deems necessary and appropriate.

(1) Normally and as appropriate, the Program will be named as an additional insured, mortgagee, or loss payee, for the amount of its interest; any waiver of this requirement must be in writing;

(2) Cancellation will require adequate advance written notice;

(3) The Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc., in the case of marine insurance, vessel seaworthiness will be required;

(4) The insured must provide coverage for any other risk or casualty the Program may require.

#### § 253.18 Closing.

(a) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(b) *Contracts.* Promissory notes, security documents, and any other documents the Program may require will be on standard Program forms that may not be altered without Program written approval. The Program will ordinarily prepare all contracts, except certain pledges involving real property or other matters involving local law, which will be prepared by each obligor's attorney at the direction and approval of the Program.

(c) *Additional requirements.* At its discretion the Program may require services from applicant's attorneys, other contractors or agents. Real property services required from an applicant's attorney or agent may include, but are not limited to: Title search, title insurance, mortgage and other document preparation, document execution and recording, escrow and disbursement, and legal opinions and other assurances. The Program will notify the applicant in advance if any such services



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are required of the applicant's attorneys, contractors or other agents. Applicants are responsible for all attorney's fees, as well as those of any other private contractor. Attorneys and other contractors must be satisfactory to the Program.

(d) *Closing schedules.* The Program will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of an inability by any of the parties to meet the closing schedule.

### **§ 253.19 Dual-use CCF.**

The Program may require the pledge of a CCF account or annual deposits of some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-deferral benefits, but also gives the Program control of CCF withdrawals, recourse against CCF deposits, ensures an emergency refurbishing reserve (tax-deferred) for project property, and provides additional collateral.

### **§ 253.20 Fees.**

(a) *Application fee.* See §§ 253.10 and 253.12(b).

(b) *Guarantee fee.* For existing Guaranteed Loans, an annual guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent guarantee fee is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* The Program will assess a fee of one quarter of one (1) percent of the note to be refinanced or assumed. This fee is due upon application for refinancing or assumption of a guaranteed or direct loan. Upon submission, the fee shall be non-refundable. The Program may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose will benefit the United States.

(d) *Where payable.* Fees are payable by check to "U.S. Department of Commerce/NOAA." Other than those collected at application or closing, fees are payable by mailing checks to the

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"U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service," to such address as the Program may designate. To ensure proper crediting, each check should include the official case number the Program assigns.

### **§ 253.21 Demand by guaranteed noteholder and payment.**

Every demand by the guaranteed noteholder must be delivered in writing to the Program and must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. The only period during which a guaranteed noteholder can make demand for a payment default begins on the thirty-first day of the payment default and continues through the ninetieth day of a payment default. The noteholder must possess evidence of the demand's timely delivery.

### **§ 253.22 Program operating guidelines.**

The Program may issue policy and administrative guidelines, as the need arises.

### **§ 253.23 Default and liquidation.**

Upon default under the terms of any note, guarantee, security agreement, mortgage, or other security document the Program shall take remedial actions including, but not limited to, where appropriate, retaking or arrest of collateral, foreclosure, restructuring, debarment, referral for debt collection, or liquidation as it deems best able to protect the U.S. Government's interest.

### **§ 253.24 Enforcement violations and adverse actions.**

(a) *Compliance with applicable law.* All applicants and Program participants shall comply with applicable law.

(b) *Applicant disqualification.* (1) Any issuance of any citation or Notice of Violation and Assessment by NMFS enforcement or other enforcement authority may constitute grounds for the Program to:

- (i) Delay application or approval processing;
- (ii) Delay loan closing;

(iii) Delay disbursement of loan proceeds;

(iv) Disqualify an applicant or obligor; or

(v) Declare default.

(2) The Program will not approve loans or disburse funds to any applicant found to have an outstanding, final and unappealable fisheries fine or other unresolved penalty until either: Such fine is paid or penalty has been resolved; or the applicant enters into an agreement to pay the penalty and makes all payments or installments as they are due. Failure to pay or resolve any such fine or penalty in a reasonable period of time will result in the applicant's disqualification.

(c) *Foreclosure in addition to other penalties.* In the event that a person with an outstanding balance on a Program loan or guarantee violates any ownership, lease, use, or other provision of applicable law, such person may be subject to foreclosure of property, in addition to any fines, sanctions, or other penalties.

#### § 253.25 Other administrative requirements.

(a) *Debt Collection Act.* In accordance with the provisions of the Debt Collection Improvement Act of 1996, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan guarantee if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury.

(b) *Certifications.* Applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," or its equivalent or successor form, if any.

(c) *Taxpayer identification.* An applicant classified for tax purposes as an individual, limited liability company, partnership, proprietorship, corporation, or legal entity is required to submit along with the application a taxpayer identification number (TIN) (social security number, employer identification number as applicable, or reg-

istered foreign organization number). Recipients who either fail to provide their TIN or provide an incorrect TIN may have application processing or funding suspended until the requirement is met.

(d) *Audit inquiry.* An audit of a Program loan may be conducted at any time. Auditors, selected at the discretion of the Program or other agency of the United States, shall have access to any and all books, documents, papers and records of the obligor or any other party to a financing that the auditor(s) deem(s) pertinent, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium.

(e) *Paperwork Reduction Act.* The application requirements contained in these rules have been approved under OMB control number 0648-0012. The applications for the halibut/sablefish QS crew member eligibility certificate have been approved under OMB control number 0648-0272. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

#### § 253.26 Traditional loans.

(a) *Eligible projects.* Financing or refinancing up to 80 percent of a project's actual cost shall be available to any citizen who is determined to be eligible and qualified under the Act and these rules, except—

(1) The Program will not finance the cost of new vessel construction.

(2) The Program will not finance a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

(b) *Financing or refinancing.* (1) Projects, other than those specified in paragraphs (a) (1) and (a)(2) of this section, may be financed, as well as refinanced.

(2) Notwithstanding paragraph (a)(1) of this section, the Program may refinance the construction cost of a vessel whose construction cost has already been financed (or otherwise paid) prior to the submission of a loan application.

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(3) Notwithstanding paragraph (a)(2) of this section, the Program may refinance the refurbishing cost of a vessel whose initial refurbishing cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(4) The Program may finance or refinance the purchase or refurbishment of any vessel or facility for which the Secretary has:

- (i) Accelerated and/or paid outstanding debts or obligations;
- (ii) Acquired; or
- (iii) Sold at foreclosure.

(c) *Existing vessels and facilities.* The Program may finance the purchase of an existing vessel or existing fishery facility if such vessel or facility will be refurbished in the United States and will be used in the fishing industry.

(d) *Fisheries modernization.* Notwithstanding any of this part, the Program may finance or refinance any:

(1) Activities that assist in the transition to reduced fishing capacity; or

(2) Technologies or upgrades designed to:

- (i) Improve collection and reporting of fishery-dependent data;
- (ii) Reduce bycatch;
- (iii) Improve selectivity;
- (iv) Reduce adverse impacts of fishing gear; or
- (v) Improve safety.

(e) *Guaranty transition.* Upon application by the obligor, any guaranteed loans originated prior to October 11, 1996, may be refinanced as direct loans, regardless of the original purpose of the guaranteed loan.

(f) *Maturity.* Maturity may not exceed 25 years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(g) *Credit standards.* Traditional loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted in accordance with the Program's assessment of individual credit risks.

## § 253.27 IFQ financing.

The Program may finance or refinance the project cost of purchasing, including the reimbursement of obligations for expenditures previously made

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for purchasing, individual fishing quotas in accordance with the applicable sections of the Magnuson-Stevens Fishery Conservation and Management Act or any other statute.

## § 253.28 Halibut sablefish IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Entry-level fishermen means fishermen who do not own any IFQ in the year they apply for a loan.

(2) Fishermen who fish from small vessels means fishermen wishing to purchase IFQ for use on Category B, Category C, or Category D vessels, but who do not own, in whole or in part, any Category A or Category B vessels, as such vessels are defined in 50 CFR 679.40(a)(5) of this title.

(3) Halibut sablefish quota share means a halibut or sablefish permit, the face amount of which is used as the basis for the annual calculation of a person's halibut or sablefish IFQ, also abbreviated as "HSQS" or "halibut/sablefish QS."

(4) Halibut/Sablefish IFQ means the annual catch limit of halibut or sablefish that may be harvested by a person who is lawfully allocated halibut or sablefish quota share, a harvest privilege for a specific portion of the total allowable catch of halibut or sablefish.

(b) *Entry level fishermen.* The Program may finance up to 80 percent of the cost of purchasing HSQS by an entry level fisherman who:

(1) Does not own any halibut/sablefish QS during the origination year;

(2) Applies for a loan to purchase a quantity of halibut/sablefish QS that is not greater than the equivalent of 8,000 lb. (3,628.7 kg) of IFQ during the origination year;

(3) Possesses the appropriate transfer eligibility documentation duly issued by RAM for HSQS;

(4) Intends to be present aboard the vessel, as may be required by applicable regulations; and

(5) Meets all other Program eligibility, qualification, lending and credit requirements.

(c) *Fishermen fishing from small vessels.* The Program may finance up to 80 percent of the cost of purchasing HSQS by a fisherman who fishes from a small

vessel, provided that any such fisherman shall:

(1) Apply for a loan to purchase halibut or sablefish QS for use on vessel Categories B, C, or D, as defined under 50 CFR 679.40(a)(5) of this title;

(2) Not own an aggregate quantity of halibut/sablefish QS (including the loan QS) of more than the equivalent of 50,000 lb. (22,679.6 kg) of IFQ during the origination year;

(3) Not own, in whole or in part, directly or indirectly (including through stock or other ownership interest) any vessel of the type that would have been assigned Category A or Category B HSQS under 50 CFR 679.40(a)(5);

(4) Possess the appropriate transfer eligibility documentation duly issued by the RAM for HSQS;

(5) Intend to be present aboard the vessel, as may be required by applicable regulations, as IFQ associated with halibut/sablefish QS financed by the loan is harvested; and

(6) Meet all other Program eligibility, qualification, lending and credit requirements.

(d) *Refinancing.* (1) The Program may refinance any existing debts associated with HSQS an applicant currently holds, provided that—

(i) The HSQS being refinanced would have been eligible for Program financing at the time the applicant purchased it, and

(ii) The applicant meets the Program's applicable lending requirements.

(2) The refinancing is in an amount up to 80 percent of HSQS' current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing HSQS debt being refinanced.

(3) In the event that the current market value of HSQS and principal loan balance do not meet the 80 percent requirement in paragraph (d)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(e) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(f) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(g) *Security.* Although quota share(s) will be the primary collateral for a HSQS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(h) *Crew member transfer eligibility certification.* The Program will accept RAM certification as proof that applicants are eligible to hold HSQS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(i) *Program credit standards.* HSQS loans, regardless of purpose, are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

#### § 253.29 CDQ loans.

(a) *FFP actions.* The Program may finance or refinance up to 80 percent of a project's actual cost.

(b) *Eligible projects.* Eligible projects include the purchase of all or part of ownership interests in fishing or processing vessels, shoreside fish processing facilities, permits, quota, and cooperative rights in any of the Bering Sea and Aleutian Islands fisheries.

(c) *Eligible entities.* The following communities, in accordance with applicable law and regulations are eligible to participate in the loan program:

(1) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(2) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk,

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Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(3) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(4) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(5) The villages of Brevig Mission, Diomedes, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(6) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(7) Any new groups established by applicable law.

(d) *Loan terms.* (1) CDQ loans may have terms up to thirty years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(2) CDQ loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

### § 253.30 Crab IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Crab means those crab species managed under the Fishery Management Plan for Bering Sea/Aleutian Island (BSAI) King and Tanner Crab.

(2) Crab FMP means the Fishery Management Plan for BSAI King and Tanner Crab.

(3) Crab quota share means a BSAI King and Tanner Crab permit, the base amount of which is used as a basis for the annual calculation of a person's

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Crab IFQ, also abbreviated as “Crab QS.”

(b) *Crab captains or crewmen.* The Program may finance up to 80 percent of the cost of purchasing Crab QS by a citizen:

(1) Who is or was:

(i) A captain of a crab fishing vessel, or

(ii) A crew member of a crab fishing vessel;

(2) Who has been issued the appropriate documentation of eligibility by RAM;

(3) Whose aggregate holdings of QS will not exceed any limit on Crab QS holdings that may be in effect in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing; and will not hold either individually or collectively, based on the initial QS pool, as published in 50 CFR Part 680, Table 8; and

(4) Who, at the time of initial application, meets all other applicable eligibility requirements to fish for crab or hold Crab QS contained in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing.

(c) *Refinancing.* (1) The Program may refinance any existing debts associated with Crab QS that an applicant currently holds, provided that:

(i) The Crab QS being refinanced would have been eligible for Program financing at the time the applicant purchased it;

(ii) The applicant meets the Program's applicable lending requirements; and

(iii) The applicant would meet the requirements found in the Crab FMP implementing regulations at the time any such refinancing loan would close.

(2) The Program may refinance an amount up to 80 percent of Crab QS's current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing Crab QS debt being refinanced.

(3) In the event that the current market value of Crab QS and current principal balance do not meet the 80 percent requirement in paragraph (c)(2) of

this section, applicants seeking refinancing may be required to provide additional down payment.

(d) *Maturity*. Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(e) *Repayment*. Repayment schedules will be set by the loan documents.

(f) *Security*. Although the quota share will be the primary collateral for a Crab QS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(g) *Crew member transfer eligibility certification*. The Program will accept RAM transfer eligibility certification as proof that applicants are eligible to hold Crab QS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(h) *Crab Quota Share Ownership Limitation*. A program obligor must comply with all applicable maximum amounts, as may be established by NMFS regulations, policy or North Pacific Fishery Management Council action.

(i) *Program credit standards*. Crab QS loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

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### Subpart C—Interjurisdictional Fisheries

#### § 253.50 Definitions.

The terms used in this subpart have the following meanings:

*Act* means the Interjurisdictional Fisheries Act of 1986, Public Law 99–659 (Title III).

*Adopt* means to implement an interstate fishery management plan by State action or regulation.

*Commercial fishery failure* means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

*Enforcement agreement* means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

*Federal fishery management plan* means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

*Fisheries management* means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

*Fishery resource* means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

*Interjurisdictional fishery resource* means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

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*Interstate Commission* means a commission or other administrative body established by an interstate compact.

*Interstate compact* means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

*Interstate Fisheries Research Program* means research conducted by two or more state agencies under a formal interstate agreement.

*Interstate fishery management plan* means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

*Landed* means the first point of off-loading fishery resources.

*NMFS Regional Director* means the Director of any one of the five National Marine Fisheries Service regions.

*Project* means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

*Research* means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

*Secretary* means the Secretary of Commerce or his/her designee.

*State* means each of the several states, the District of Columbia, the

Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

*State agency* means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

*Value* means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

*Volume* means the weight of the fishery resource as landed, at the first point of landing.

§ 253.51 Apportionment.

(a) *Apportionment formula.* The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[\text{A}\% + \text{B}\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each state's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research Program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c)(1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) *Unused apportionments.* Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

#### § 253.52 State projects.

(a) *General*—(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal



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fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

## § 263.53 Other funds.

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment for-

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mula in § 253.601(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State Programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

## § 253.54 Administrative requirements.

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

## PART 259—CAPITAL CONSTRUCTION FUND

### JOINT TAX REGULATIONS

Sec.

259.1 Execution of agreements and deposits made in a Capital Construction Fund.

### CAPITAL CONSTRUCTION FUND AGREEMENT

259.30 Application for Interim Capital Construction Fund Agreement ("Interim CCF Agreement").

259.31 Acquisition, construction, or reconstruction.

259.32 Conditional fisheries.

- 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.
- 259.34 Minimum and maximum deposits; maximum time to deposit.
- 259.35 Annual deposit and withdrawal reports required.
- 259.36 CCF accounts.
- 259.37 Conditional consents to withdrawal qualification.
- 259.38 Miscellaneous.

AUTHORITY: 46 U.S.C. 1177.

#### JOINT TAX REGULATIONS

##### **§ 259.1 Execution of agreements and deposits made in a Capital Construction Fund.**

In the case of a taxable year of a taxpayer beginning after December 31, 1969, and before January 1, 1972, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years will be deemed to be effective on the date of the execution of such agreement or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(b) Notwithstanding the provisions of paragraph (a) of this section, where:

(1) For taxable years beginning after December 31, 1969, and prior to January 1, 1971, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1972, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1972, and

(2) For taxable years beginning after December 31, 1970, and prior to January 1, 1972, an application for a capital construction fund agreement is filed by a taxpayer prior to January 1, 1973, and a capital construction fund agreement is executed and entered into by the taxpayer prior to March 1, 1973 (or, if earlier, 60 days after the publication of final joint regulations under section 607 of the Merchant Marine Act, 1936, as amended); then such a capital con-

struction fund agreement will be deemed to be effective as of the close of business of the last regular business day of each such taxable year or years to which such deposit related.

(c)(1) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return for such taxable year or years, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of each such taxable year or years to which such deposit relates, whichever day is earlier.

(2) Notwithstanding paragraph (c)(1) of this section, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under paragraph (c)(1) of this section but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

(d) Nothing in this section shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds or with respect to the treatment of deposits for any taxable year or years other than a taxable year or years beginning after December 31, 1969, and before January 1, 1972.<sup>1</sup>

[37 FR 25025, Nov. 25, 1972, as amended at 38 FR 8163, Mar. 29, 1973]

<sup>1</sup>The phrase "existing capital and special reserve funds" does not refer to the Capital Construction Fund program but rather to funds established with the Maritime Administration prior to the amendment of the Merchant Marine Act, 1936, which authorized the Capital Construction Fund program.

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### CAPITAL CONSTRUCTION FUND AGREEMENT

SOURCE: Sections 259.30 to 259.38 appear at 39 FR 33675, Sept. 19, 1974, unless otherwise noted.

#### **§ 259.30 Application for Interim Capital Construction Fund Agreement (“Interim CCF Agreement”).**

(a) *General qualifications.* To be eligible to enter into an Interim CCF Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined in section 607(k)(1) of the Act) operating in the foreign or domestic commerce of the United States.

(3) Have an acceptable program for the acquisition, construction, or reconstruction of one or more qualified vessels (as defined in section 607(k)(2) of the Act). Qualified vessels must be for commercial operation in the fisheries of the United States. If the qualified vessel is 5 net tons or over, it must be documented in the fisheries of the United States. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR part 176) by the U.S. Coast Guard as qualified to carry more than six passengers or demonstrate to the Secretary’s satisfaction that the carrying of fishing parties for hire will constitute its primary activity. The program must be a firm representation of the applicant’s actual intentions. Vague or contingent objectives will not be acceptable.

(b) *Content of application.* Applicants seeking an Interim CCF Agreement may make application by letter providing the following information:

(1) Proof of U.S. citizenship;

(2) The first taxable year for which the Interim CCF Agreement is to apply (see § 259.33 for the latest time at which applications for an Interim CCF Agreement relating to a previous taxable year may be received);

(3) The following information regarding each “eligible vessel” which is to

be incorporated in Schedule A of the Interim CCF Agreement for purposes of making deposits into a CCF pursuant to section 607 of the Act:

(i) Name of vessel,

(ii) Official number, or, in the case of vessels under 5 net tons, the State registration number where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristic (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which vessel is documented and date last documented,

(ix) If a fishing vessel, the fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common names—of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) If a fishing vessel, the area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources).

(4) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Interim CCF Agreement) including:

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessel),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidences of the indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF under an Interim CCF Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

(vii) Fishery of operation (which in this section means each species or group of species—each species must be specifically identified by acceptable common name—of fish, shellfish, or other living marine resources),

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will will operate for each species or group of species of fish, shellfish, or other living marine resources).

(c) *Filing.* The application must be signed and submitted in duplicate to the Regional Office of the National Marine Fisheries Service's Financial Assistance Division corresponding to the region in which the party conducts its business. As a general rule, the Interim CCF Agreement must be executed and entered into by the taxpayer on or prior to the due date, with extensions, for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

[39 FR 33675, Sept. 19, 1974, as amended at 42 FR 65185, Dec. 30, 1978]

#### **§ 259.31 Acquisition, construction, or reconstruction.**

(a) *Acquisition.* No vessel having previously been operated in a fishery of the United States prior to its acquisition by the party seeking CCF withdrawal therefor shall be a qualified vessel for the purpose of acquisition, except in the cases specified in paragraphs (a)(1) and (2) of this section:

(1) A vessel not more than 5 years old, at the time of its acquisition by the party seeking CCF withdrawal

therefor may be a qualified vessel for the purpose of acquisition, but only if each acquisition in this category becomes a Schedule A vessel and there exists for each acquisition in this category (on a one-for-one basis) an additional Schedule B construction or reconstruction. The sole consideration for permitting an acquisition in this category is that it will enable the party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the additional Schedule B construction or reconstruction. Should this consideration materially fail, the Secretary shall, at his discretion, disqualify previously qualified withdrawals in this category, seek liquidated damages as provided for in paragraph (a)(4) of this section and/or terminate the Interim CCF Agreement.

(2) A vessel more than 5 years old, but not more than 25 years old (special showing required if more than 25 years old, see paragraph (b) of this section), at the time of acquisition by the party seeking CCF withdrawal therefor may be a qualified vessel for the purpose of acquisition, but only if that same vessel becomes a Schedule A vessel and (in addition to being a Schedule B vessel for the purpose of its acquisition) becomes a Schedule B vessel for the purpose of that same vessel's reconstruction to be accomplished ordinarily within 7 years from the date of acquisition. The sole consideration for permitting an acquisition in this category is that it will enable a party (but the Secretary will not attempt to predetermine such an ability) to accelerate accomplishment of the Schedule B reconstruction of the vessel so acquired. Should this consideration materially fail, the same penalty prescribed in paragraph (a)(1) of this section applies.

(3) Reserved for minimum deposits under this section.

(4) Reserved for liquidated damages.

(b) *Reconstruction.* No reconstruction project costing less than \$100,000 shall qualify a vessel for reconstruction, unless the reconstruction project costs, or will cost, 20 percent or more of the reconstructed vessel's acquisition cost (in its unreconstructed state) to the party seeking CCF withdrawal therefor. If the reconstruction project meets

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the \$100,000 test, then the 20 percent test does not apply. Conversely, if the reconstruction project does not meet the \$100,000 test, then the 20 percent test applies.

(1) Reconstruction may include rebuilding, replacing, reconditioning, converting and/or improving any portion of a vessel. A reconstruction project must, however, substantially prolong the useful life of the reconstructed vessel, increase its value, or adapt it to a different commercial use in the fishing trade or industry.

(2) All, or the major portion (ordinarily, not less than 80 percent), of a reconstruction project's actual cost must (for the purpose of meeting the above dollar or percentage tests) be classifiable as a capital expenditure for Internal Revenue Service (IRS) purposes. That otherwise allowable (i.e., for the purpose of meeting the above dollar or percentage tests) portion of a reconstruction project's actual cost which is not classifiable as a capital expenditure shall, however, be excluded from the amount qualified for withdrawal as a result of the reconstruction project.

(3) No vessel more than 25 years old at the time of withdrawal or request for withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life at least 10 years beyond the date reconstruction is completed.

(c) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 18 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

(d) *Energy saving improvements.* An improvement made to a vessel to conserve energy shall, regardless of cost, be treated as a reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure and shall be exempted from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32 and from all qualifying tests for recon-

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struction set forth in paragraph (b) of this section with the following exceptions:

(1) An energy saving improvement shall be required to meet both conditional fishery requirements and the qualifying tests for reconstruction if it serves the dual purpose of saving energy and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel.

(2) That portion of the actual cost of an energy saving improvement which is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes.

(e) *Safety projects.* The acquisition and installation of safety equipment for a qualified vessel and vessel modifications whose central purpose is materially increasing the safety of a qualified vessel or the acquisition and installation of equipment required by law or regulation that materially increases the safety of a qualified vessel shall, regardless of cost, be treated as reconstruction for the purpose of qualifying a CCF withdrawal for such expenditure, shall be exempt from having to meet conditional fishery requirements for reconstruction as set forth in § 259.32, and shall be exempt from all qualifying tests for reconstruction set forth in paragraph (b) of this section, with the following exceptions:

(1) A safety improvement shall be required to meet both conditional fishery requirements and all qualifying tests for reconstruction if it serves the dual purpose of safety and meeting the reconstruction requirement of paragraph (a) of this section for qualifying a withdrawal for the acquisition of a used vessel;

(2) That portion of the actual cost of a safety improvement that is to be paid for from the CCF must be classifiable and treated as a capital expenditure for Internal Revenue Service purposes;

(3) Safety improvement projects whose clear and central purpose is restricted to complying with the requirements of the Commercial Fishing Industry Vessel Safety Act of 1988 (Public Law 100-424 Sec. 1, 102 stat. 1585 (1988) (codified in scattered sections of 46

U.S.C.) shall, without further documentation, be considered to fall within this paragraph (e). Satisfactory documentation will be required for all other projects proposed to be considered as falling within this paragraph (e). Projects not required by law or regulation whose central purpose clearly involves something other than an improvement that materially increases the safety of a vessel will not be considered to fall within this paragraph (e).

[39 FR 33675, Sept. 19, 1974, as amended at 46 FR 54563, Nov. 3, 1981; 62 FR 331, Jan. 3, 1997]

#### § 259.32 Conditional fisheries.

(a) The Secretary may from time-to-time establish certain fisheries in which CCF benefits will be restricted. The regulatory mechanism for so doing is part 251 of this chapter. Each fishery so restricted is termed a "conditional fishery". Subpart A of part 251 of this chapter establishes the procedure to be used by the Secretary in proposing and adopting a fishery as a conditional fishery. Subpart B of part 251 of this chapter enumerates each fishery actually adopted as a conditional fishery (part 251 of this chapter should be referred to for details). The purpose of this § 259.32 is to establish the effect of conditional fishery adoption upon Interim CCF Agreements.

(b) If a written request for an otherwise permissible action under an Interim CCF Agreement is submitted prior to the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise normal manner, upon so much of the action then applied for as is then permissible without regard to the subsequent adoption of a conditional fishery (even, if that adoption occurs before the Secretary gives his consent or issues an Interim CCF Agreement or amendment thereto, all as the case may be). Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(c) If a written request for an otherwise permissible action under an Interim CCF Agreement, or an application for an Interim CCF Agreement, is submitted after the date upon which conditional fishery adoption occurs, then the Secretary will act, in an otherwise

normal manner, upon so much of the action then applied for as is then permissible without regard to the previous adoption of a conditional fishery provided, however, that this paragraph shall apply only to construction or reconstruction for which a binding contract has been reduced to writing prior to the date upon which conditional fishery adoption occurred. Nevertheless, the conditions as set forth in paragraph (d) of this section shall apply.

(d) Conditional fishery adoption shall have no effect whatsoever upon a Schedule B objective whose qualification for withdrawal (which may be in an amount equal to the total cost over time of a Schedule B objective, i.e., a series of withdrawals) has been, prior to the date of conditional fishery adoption, either consented to by the Secretary or requested in accordance with paragraph (b) or (c) of this section. This extends to past, present, and future withdrawals in an amount representing up to 100 percent of the cost of a Schedule B objective. Commencement of any project in these categories shall, however, be started not later than 6 months from the date of conditional fishery adoption and shall be completed within 24 months from the date of conditional fishery adoption, unless for good and sufficient cause shown the Secretary, at his discretion, consents to a longer period for either project commencement or completion. Consent to the qualification of withdrawal for any project in these categories not commenced or completed within the periods allowed shall be revoked at the end of the periods allowed.

(e) Conditional fishery adoption shall have no effect whatsoever upon Schedule B objectives which will not result in significantly increasing harvesting capacity in a fishery adopted as a conditional fishery.

(1) Construction of a new vessel (vessel "Y") for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the party causing the "Y" vessel to be constructed causes (within 1 year after the delivery of vessel "Y") to be permanently removed from all fishing, or

placed permanently in a fishery not then adopted as a conditional fishery, under such conditions as the Secretary may deem necessary or desirable, a vessel (vessel “Z”) which has during the previous 18 months operated substantially in the same fishery as the “Y” vessel and which has a fishing capacity substantially equivalent to the “Y” vessel. Failure to remove a vessel could subject all withdrawals to be treated as nonqualified and may be cause for termination of the CCF. What constitutes substantially equivalent fishing capacity shall be a matter for the Secretary’s discretion. Ordinarily, in exercising his discretion about what does or does not constitute substantially equivalent fishing capacity, the Secretary will take into consideration (i) the average size of vessels constructed for the adopted conditional fishery in question at the time vessel “Z” was constructed (or, if constructed for a different fishery, the average size of vessels in the adopted conditional fishery at the time vessel “Z” entered it), (ii) the average size of vessels constructed for the adopted conditional fishery at the time vessel “Y” was or will be constructed, and (iii) such other factors as the Secretary may deem material and equitable, including the length of time the party had owned or leased vessel “Z” and the length of time the vessel has operated in the conditional fishery. The Secretary will consider these factors, and exercise his discretion, in such a way as to encourage use of this program by established fishermen who have owned or leased for substantial periods vessels which need to be replaced, even though a “Z” vessel may have been constructed at a time which dictated a lesser fishing capacity than dictated for a “Y” vessel at the time of its construction.

(2) Acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless the vessel to be acquired and/or reconstructed had during the previous 3 years operated substantially in the same fishery as the adopted conditional fishery in which it will operate after acquisition and/or reconstruction. If less than 3 years, then acquisition

and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall be deemed to significantly increase harvesting capacity in that fishery unless there occurs vessel removal or permanent placement elsewhere under the same conditions specified for construction in paragraph (e)(1) of this section.

(3) Construction of a new vessel or the acquisition and/or reconstruction of a used vessel for operation in an adopted conditional fishery shall not be deemed to significantly increase the harvesting capacity where the vessel constructed, acquired and/or reconstructed replaces another vessel which was lost or destroyed and which had, immediately prior to the loss or destruction, operated in the same fishery as the adopted conditional fishery, provided, however, that the fishing capacity of the replacement vessel has a fishing capacity substantially equivalent to the vessel lost or destroyed and that the construction, acquisition and/or reconstruction is completed within 2 years after the close of the taxable year in which the loss or destruction occurred. The Secretary may, at his discretion, and for good and sufficient cause shown, extend the replacement period, provided that the request for extension of time to replace is timely filed with the Secretary.

(f) Conditional fishery adoption shall have the following effect on all Schedule B objectives (whether for acquisition, construction, or reconstruction) which the Secretary deems to significantly increase harvesting capacity in that fishery, excluding those circumstances specifically exempted by paragraphs (b) through (e) of this section (which shall be governed by the provisions of paragraphs (b) through (e) of this section).

(1) The Secretary may nevertheless consent to the qualification of withdrawal, but only up to an amount not exceeding the total of eligible ceilings actually deposited during tax years other than the taxable year in which conditional fishery adoption occurs plus a pro-rata portion of eligible ceilings generated in the tax year in which conditional fishery adoption occurs. Pro-rata shall be according to the number of months or any part thereof

in a party's tax year which elapse before the adoption of the conditional fishery occurs. For example, if a party's tax year runs from January 1, 1974, to December 31, 1974, and conditional fishery adoption occurs on August 15, 1974, (i.e., during the 8th month of the party's tax year), then the pro-rata portion for that year is eight-twelfths of the total eligible ceilings generated during that year.

(2) Qualified withdrawals in excess of the amount specified in paragraph (f)(1) of this section shall not, during the continuance of the adopted conditional fishery, be consented to. Parties at this point shall have the following option:

(i) Make, with the Secretary's consent, a nonqualified withdrawal of the excess and discontinue the future deposit of eligible ceilings (which may effect termination of the Interim CCF Agreement).

(ii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective not then involving an adopted conditional fishery. If amendment of an Interim CCF Agreement is necessary in order to include a Schedule B objective not then involving an adopted conditional fishery, the party may, with the Secretary's consent, make the necessary amendment.

(iii) Reserve the excess, as well as the future deposit of eligible ceilings, for a Schedule B objective involving a then adopted conditional fishery in anticipation that the then adopted conditional fishery will eventually be disadopted, in which case all deposits of eligible ceilings will once again be eligible for the Secretary's consent as qualified withdrawals. If the adoption of a conditional fishery continues for a substantial length of time and there is no foreseeable prospect of disadoption, then the Secretary, in his discretion, may require paragraph (f)(2)(i) or (ii) of this section to be effected.

(g) The Secretary shall neither enter into a new Interim CCF Agreement, nor permit amendment of an existing one, which involves a Schedule B objective in a then adopted conditional fishery unless paragraph (b), (c) or (d) of this § 259.32 applies or unless the Schedule B objective is expressly conditioned upon acquisition construction, or reconstruction of the type permitted

under paragraph (e) of this § 259.32. Such an express condition would not survive beyond the time at which conditional fishery status is removed.

**§ 259.33 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which Interim CCF Agreement is effective.**

(a) *Periods controlling permissibility.* For the purpose of this § 259.33, the period between the beginning and the end of a party's tax year is designated "Period (aa)"; the period between the end of a party's tax year and the party's tax due date for that tax year is designated "Period (bb)"; the period between the party's tax due date and the date on which ends the party's last extension (if any) of that tax due date is designated "Period (cc)".

(b) *Constructive deposits and withdrawals (before Interim CCF Agreement effectiveness date).* Constructive deposits and withdrawals shall be permissible only during the Period (aa) during which a written application for an interim CCF Agreement is submitted to the Secretary and so much of the next succeeding Period (aa), if any, which occurs before the Secretary executes the Interim CCF Agreement previously applied for. All otherwise qualified expenditures of eligible ceilings during Period (aa) may be consented to by the Secretary as constructive deposits and withdrawals: *Provided*, The applicant's application for an Interim CCF Agreement and for consent to constructive deposit and withdrawal qualification (together with sufficient supporting data to enable the Secretary's execution or issuance of consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc). If, however, the Secretary receives the completed application in proper form so close to the latest permissible period that the Interim CCF Agreement cannot be executed and/or the consent given before the end of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the applicant to negotiate with the Internal Revenue Service (IRS) for such relief as may be available (e.g.,



filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Interim CCF Agreement and issue his consent however long past the applicant's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the applicant's having failed to apply in a more timely fashion.

(c) *Constructive deposits (after Interim CCF Agreement effectiveness date).* The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Interim CCF Agreement. Eligible ceilings must, after the effective date of an interim CCF Agreement, be physically deposited in money or kind in scheduled depositories before the last date eligible ceilings for any Period (aa) of any party become ineligible for deposit (the last date being Period (bb) or Period (cc), whichever applies).

(d) *Ratification of withdrawals (as qualified) made without first having obtained Secretary's consent.* The Secretary may ratify as qualified any withdrawal made without first having obtained the Secretary's consent therefor, provided the withdrawal was such as would have resulted in the Secretary's consent had it been requested before withdrawal, and provided further that the party's request for consent (together with sufficient supporting data to enable issuance of the Secretary's consent) is submitted to the Secretary either before the end of Period (bb) or, if extension was requested and received, before the end of Period (cc).

(1) If, however, the Secretary receives the request in proper form so close to the latest permissible period that the consent cannot be given before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless issue his consent however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for

any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely fashion.

(2) All parties shall be counseled that it is manifestly in their best interest to request the Secretary's consent 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one to which the Secretary will not or cannot consent by ratification, then the result will be either, or both, at the Secretary's discretion, an unqualified withdrawal or an involuntary termination of the Interim CCF Agreement.

(3) Should the withdrawal made without having first obtained the Secretary's consent be made in pursuance of a project not then an eligible Schedule B objective, then the Secretary may entertain an application to amend the Interim CCF Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal, all under the same time constraints and conditions as otherwise specified herein.

(4) Any withdrawals made, after the effective date of an Interim CCF Agreement, without the Secretary's consent are automatically non-qualified withdrawals unless the Secretary subsequently consents to them by ratification as otherwise specified herein.

(5) Redeposit of that portion of the ceiling withdrawn without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If such a non-qualified withdrawal adversely affects the Interim CCF Agreement's general status in any wise deemed by the Secretary, at his discretion, to be significant and material, the Secretary may involuntarily terminate the Interim CCF Agreement.

(e) *First tax year for which Interim CCF Agreement is effective.* An Agreement, to be effective for any party's Period (aa), must be executed and entered into by the party, and submitted to the Secretary, before the end of Period (bb) or

Period (cc), whichever applies, for such Period (aa). If executed and entered into by the party, and/or received by the Secretary, after the end of Period (bb) or Period (cc), whichever applies, then the Agreement will be first effective for the next succeeding Period (aa).

(1) If, however, the Secretary receives an Agreement executed and entered into by the party in proper form so close to the latest permissible period that the Secretary cannot execute the Agreement before expiration of Period (bb) or Period (cc), whichever applies, then the burden is entirely upon the party to negotiate with IRS for such relief as may be available (e.g., filing an amended tax return, if appropriate). The Secretary will nevertheless execute the Agreement however long past the party's Period (bb) or Period (cc), whichever applies, the Secretary's administrative workload requires. Should IRS relief be, for any reason, unavailable, the Secretary shall regard the same as merely due to the party's having failed to apply in a more timely manner.

(2) All parties shall be counseled that it is manifestly in their best interest to enter into and execute an Agreement, and submit the same to the Secretary, at least 45 days in advance of the Period (bb) or Period (cc), whichever applies, for the Period (aa) for which the Agreement is first intended to be effective.

**§ 259.34 Minimum and maximum deposits; maximum time to deposit.**

(a) *Minimum annual deposit.* The minimum annual (based on each party's taxable year) deposit required by the Secretary in order to maintain an Interim CCF Agreement shall be an amount equal to 2 percent of the total anticipated cost of all Schedule B objectives unless such 2 percent exceeds during any tax year 50 percent of a party's Schedule A taxable income, in which case the minimum deposit for that year shall be 50 percent of the party's Schedule A taxable income.

(1) Minimum annual deposit compliance shall be audited at the end of each party's taxable year unless any one or more of the Schedule B objectives is scheduled for commencement more

than 3 taxable years in advance of the taxable year in which the agreement is effected, in which case minimum annual deposit compliance shall be audited at the end of each 3 year taxable period. In any taxable year, a Party may apply any eligible amount in excess of the 2 percent minimum annual deposit toward meeting the party's minimum annual deposit requirement in past or future years: *Provided, however,* At the end of each 3 year period, the aggregate amount in the fund must be in compliance with 2 percent minimum annual deposit rule (unless the 50 percent of taxable income situation applies).

(2) The Secretary may, at his discretion and for good and sufficient cause shown, consent to minimum annual deposits in any given tax year or combination of tax years in an amount lower than prescribed herein: *Provided,* The party demonstrates to the Secretary's satisfaction the availability of sufficient funds from any combination of sources to accomplish Schedule B objectives at the time they are scheduled for accomplishment.

(b) *Maximum deposits.* Other than the maximum annual ceilings established by the Act, the Secretary shall not establish a maximum annual ceiling: *Provided, however,* That deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives, unless the Interim CCF Agreement is then amended to establish additional Schedule B objectives.

(c) *Maximum time to deposit.* Ten years shall ordinarily be the maximum time the Secretary shall permit in which to accumulate deposits prior to commencement of any given Schedule B objective. A time longer than 10 years, either by original scheduling or by subsequent extension through amendment, may, however, be permitted at the Secretary's discretion and for good and sufficient cause shown.

**§ 259.35 Annual deposit and withdrawal reports required.**

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit

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and withdrawal reports. Failure to submit such reports may be cause for involuntary termination of CCF Agreements.

(1) A preliminary deposit and withdrawal report at the end of each calendar year, which must be submitted not later than 45 days after the close of the calendar year. The report must give the amounts withdrawn from and deposited into the party's CCF during the subject year, and be in letter form showing the agreement holder's name, FVCCF identification number, and taxpayer identification number. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party's tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.

(2) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, with extensions (if any), for filing the party's Federal income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return

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filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

[39 FR 33675, Sept. 19, 1974, as amended at 48 FR 57302, Dec. 29, 1983; 53 FR 35203, Sept. 12, 1988]

### § 259.36 CCF accounts.

(a) *General*: Each CCF account in each scheduled depository shall have an account number, which must be reflected on the reports required by § 259.35. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent and then only under such conditions as the Secretary, in his discretion, prescribes.

(b) *Assignment*: The use of Fund assets for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories*: (1) Section 607(c) of the Act provides that amounts in a CCF must be kept in the depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may specify.

(2) Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

(3) Non-cash deposits or investments of the Fund should be placed in control of a trustee under the following conditions:

(i) The trustee should be specified in the Agreement;

(ii) The trust instrument should provide that all investment restrictions stated in section 607(c) of the Act will be observed;

(iii) The trust instrument should provide that the trustee will give consideration to the party's withdrawal requirements under the Agreement when investing the Fund;

(iv) The trustee must agree to be bound by all rules and regulations which have been or will be promulgated governing the investment or management of the Fund.

**§ 259.37 Conditional consents to withdrawal qualification.**

The Secretary may conditionally consent to the qualification of withdrawal, such consent being conditional upon the timely submission to the Secretary of such further proofs, assurances, and advices as the Secretary, in his discretion, may require. Failure of a party to comply with the conditions of such a consent within a reasonable time and after due notice shall, at the Secretary's discretion, be cause for either, or both, nonqualification of withdrawal or involuntary Interim CCF Agreement termination.

**§ 259.38 Miscellaneous.**

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to

treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§ 259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§ 259.30 through 259.38 are adopted. These §§ 259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§ 259.30 through 259.38 are adopted, with the following exceptions only:

(1) The vessel age limitations imposed by § 259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by § 259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§ 259.30 through 259.38 are adopted.

(e) These §§ 259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

## **SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS**

### **PART 260—INSPECTION AND CERTIFICATION**

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AUTHORITY: Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

SOURCE: 31 FR 16052, Dec. 15, 1966, unless otherwise noted.

### Subpart A—Inspection and Certification of Establishments and Fishery Products for Human Consumption

#### § 260.1 Administration of regulations.

The Secretary of Commerce is charged with the administration of the regulations in this part except that he may delegate any or all of such functions to any officer or employee of the National Marine Fisheries Service of the Department in his discretion.<sup>1</sup>

[36 FR 21037, Nov. 3, 1971]

### DEFINITIONS

#### § 260.6 Terms defined.

Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand. For the purposes of the regulations in this part, unless the context otherwise requires, the fol-

lowing terms shall have the following meanings:

*Acceptance number.* “Acceptance number” means the number in a sampling plan that indicates the maximum number of deviants permitted in a sample of a lot that meets a specific requirement.

*Act.* “Act” means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621 et seq.).

*Applicant.* “Applicant” means any interested party who requests inspection service under the regulations in this part.

*Case.* “Case” means the number of containers (cased or uncased) which, by the particular industry are ordinarily packed in a shipping container.

*Certificate of loading.* “Certificate of loading” means a statement, either written or printed, issued pursuant to the regulations in this part, relative to check-loading of a processed product subsequent to inspection thereof.

*Certificate of sampling.* “Certificate of sampling” means a statement, either written or printed issued pursuant to the regulations in this part, identifying officially drawn samples and may include a description of condition of containers and the condition under which the processed product is stored.

*Class.* “Class” means a grade or rank of quality.

*Condition.* “Condition” means the degree of soundness of the product which may affect its merchantability and includes, but is not limited to those factors which are subject to change as a result of age, improper preparation and processing, improper packaging, improper storage, or improper handling.

*Department.* “Department” means the U.S. Department of Commerce.

*Deviant.* “Deviant” means a sample unit affected by one or more deviations or a sample unit that varies in a specifically defined manner from the requirements of a standard, specification, or other inspection document.

*Deviation.* “Deviation” means any specifically defined variation from a particular requirement.

*Director.* “Director” means the Director of the National Marine Fisheries Service.

<sup>1</sup>All functions of the Department of Agriculture which pertain to fish, shellfish, and any products thereof, now performed under the authority of title II of the Act of August 14, 1946, popularly known as the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) including but not limited to the development and promulgation of grade standards, the inspection and certification, and improvement of transportation facilities and rates for fish and shellfish and any products thereof, were transferred to the Department of the Interior by the Director of the Budget (23 FR 2304) pursuant to section 6(a) of the Act of Aug. 8, 1956, popularly known as the Fish and Wildlife Act of 1956 (16 U.S.C. 742e). Reorganization Plan No. 4 of 1970 (84 Stat. 2090) transferred, among other things, such functions from the U.S. Department of the Interior to the U.S. Department of Commerce.

*Establishment.* “Establishment” means any premises, buildings, structures, facilities, and equipment (including vehicles) used in the processing, handling, transporting, and storage of fish and fishery products.

*Inspection certificate.* “Inspection certificate” means a statement, either written or printed, issued pursuant to the regulations in this part, setting forth in addition to appropriate descriptive information relative to a processed product, and the container thereof, the quality and condition, or any part thereof, of the product and may include a description of the conditions under which the product is stored.

*Inspection service.* “Inspection service” means:

(1) The sampling pursuant to the regulations in this part;

(2) The determination pursuant to the regulations in this part of:

(i) Essential characteristics such as style, type, size, or identity of any processed product which differentiates between major groups of the same kind;

(ii) The class, quality, and condition of any processed product, including the condition of the container thereof by the examination of appropriate samples;

(3) The issuance of any certificate of sampling, inspection certificates, or certificates of loading of a processed product, or any report relative to any of the foregoing; or

(4) Performance by an inspector of any related services such as to observe the preparation of the product from its raw state through each step in the entire process; or observe conditions under which the product is being harvested, prepared, handled, stored, processed, packed, preserved, transported, or held; or observe sanitation as a prerequisite to the inspection of the processed product, either on a contract basis or periodic basis; or checkload the inspected processed product in connection with the marketing of the product, or any other type of service of a consultative or advisory nature related herewith.

*Inspector.* “Inspector” means any employee of the Department authorized by the Secretary or any other person

licensed by the Secretary to investigate, sample, inspect, and certify in accordance with the regulations in this part to any interested party the class, quality and condition of processed products covered in this part and to perform related duties in connection with the inspection service.

*Interested party.* “Interested party” means any person who has a financial interest in the commodity involved.

*Licensed sampler.* “Licensed sampler” means any person who is authorized by the Secretary to draw samples of processed products for inspection service, to inspect for identification and condition of containers in a lot, and may, when authorized by the Secretary, perform related services under the act and the regulations in this part.

*Lot.* “Lot” has the following meanings:

(1) For the purpose of charging fees and issuing certificates, “Lot” means any number of containers of the same size and type which contain a processed product of the same type and style located in the same or adjacent warehouses and which are available for inspection at any one time: *Provided, That:*

(i) Processed products in separate piles which differ from each other as to grade or other factors may be deemed to be separate lots;

(ii) Containers in a pile bearing an identification mark different from other containers of such processed product in that pile, if determined to be of lower grade or deficient in other factors, may be deemed to be a separate lot; and

(iii) If the applicant requests more than one inspection certificate covering different portions of such processed product, the quantity of the product covered by each certificate shall be deemed to be a separate lot.

(2) For the purpose of sampling and determining the grade or compliance with a specification, “Lot” means each pile of containers of the same size and type containing a processed product of the same type and style which is separated from other piles in the same warehouse, but containers in the same pile bearing an identification mark different from other containers in that

pile may be deemed to be a separate lot.

*Official establishment.* “Official establishment” means any establishment which has been approved by National Marine Fisheries Service, and utilizes inspection service on a contract basis.

*Officially drawn sample.* “Officially drawn sample” means any sample that has been selected from a particular lot by an inspector, licensed sampler, or by any other person authorized by the Secretary pursuant to the regulations in this part.

*Person.* “Person” means any individual, partnership, association, business trust, corporation, any organized group of persons (whether incorporated or not), the United States (including, but not limited to, any corporate agencies thereof), any State, county, or municipal government, any common carrier, and any authorized agent of any of the foregoing.

*Plant.* “Plant” means the premises, buildings, structures, and equipment (including, but not being limited to, machines, utensils, and fixtures) employed or used with respect to the manufacture or production of processed products.

*Processed product.* “Processed product” means any fishery product or other food product covered under the regulations in this part which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

*Quality.* “Quality” means the inherent properties of any processed product which determine the relative degree of excellence of such product, and includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

*Rejection number.* “Rejection number” means the number in a sampling plan that indicates the minimum number of deviants in a sample that will cause a lot to fail a specific requirement.

*Sample.* “Sample” means any number of sample units to be used for inspection.

*Sample unit.* “Sample unit” means a container and/or its entire contents, a

portion of the contents of a container or other unit of commodity, or a composite mixture of a product to be used for inspection.

*Sampling.* “Sampling” means the act of selecting samples of processed products for the purpose of inspection under the regulations in this part.

*Secretary.* “Secretary” means the Secretary of the Department or any other officer or employee of the Department authorized to exercise the powers and to perform the duties of the Secretary in respect to the matters covered by the regulations in this part.

*Shipping container.* “Shipping container” means an individual container designed for shipping a number of packages or cans ordinarily packed in a container for shipping or designed for packing unpackaged processed products for shipping.

*Unofficially drawn sample.* “Unofficially drawn sample” means any sample that has been selected by any person other than an inspector or licensed sampler, or by any other person not authorized by the Director pursuant to the regulations in this part.

*Wholesome.* “Wholesome” means the minimum basis of acceptability for human food purposes, of any fish or fishery product as defined in section 402 of the Federal Food, Drug, and Cosmetic Act, as amended.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 21037, Nov. 3, 1971]

**§ 260.7 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.**

Subsection 203(h) of the Agricultural Marketing Act of 1946 provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:



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*Official certificate.* “Official certificate” means any form of certification, either written or printed, including those defined in § 260.6, used under this part to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

*Official device.* “Official device” means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Director for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

*Official identification.* “Official identification” means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Director and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

*Official mark.* “Official mark” means the grade mark, inspection mark, combined form of inspection and grade mark, and any other mark, or any variations in such marks, including those prescribed in § 260.86, approved by the Secretary and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. Grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part.

*Official memorandum.* “Official memorandum” means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

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### INSPECTION SERVICE

#### § 260.12 Where inspection service is offered.

Inspection service may be furnished wherever an inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service.

#### § 260.13 Who may obtain inspection service.

An application for inspection service may be made by any interested party, including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent in behalf of the foregoing.

#### § 260.14 How to make application.

An application for inspection service may be made to the officer of inspection or to any inspector, at or nearest the place where the service is desired. An up-to-date list of the Inspection Field Offices of the Department may be obtained upon request to the Director. Satisfactory proof that the applicant is an interested party shall be furnished.

#### § 260.15 Information required in connection with application.

Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by telegraph. If an application for inspection service is made orally, such application shall be confirmed promptly in writing. In connection with each application for inspection service, there shall be furnished such information as may be necessary to perform an inspection on the processed product for which application for inspection is made, including but not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or car number, codes or other identification marks, the number of containers, the type and size of the containers, the interest of the applicant in the product, whether the lot has been inspected previously to the application by any Federal agency and the purpose for which inspection is desired.

**§ 260.16 Filing of application.**

An application for inspection service shall be regarded as filed only when made in accordance with the regulations in this part.

**§ 260.17 Record of filing time.**

A record showing the date and hour when each application for inspection or for an appeal inspection is received shall be maintained.

**§ 260.18 When application may be rejected.**

An application for inspection service may be rejected by the Secretary (a) for noncompliance by the applicant with the regulations in this part, (b) for nonpayment for previous inspection services rendered, (c) when the product is not properly identifiable by code or other marks, or (d) when it appears that to perform the inspection service would not be to the best interests of the Government. Such applicant shall be promptly notified of the reason for such rejection.

**§ 260.19 When application may be withdrawn.**

An application for inspection service may be withdrawn by the applicant at any time before the inspection is performed: *Provided*, That, the applicant shall pay at the hourly rate prescribed in § 260.70 for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

**§ 260.20 Disposition of inspected sample.**

Any sample of a processed product that has been used for inspection may be returned to the applicant, at his request and expense; otherwise it shall be destroyed, or disposed of to a charitable institution.

**§ 260.21 Basis of inspection and grade or compliance determination.**

(a) Inspection service shall be performed on the basis of the appropriate

U.S. standards for grades of processed products, Federal, Military, Veterans Administration or other government agency specifications, written contract specification, or any written specification or instruction which is approved by the Secretary.

(b) Unless otherwise approved by the Director compliance with such grade standards, specifications, or instructions shall be determined by evaluating the product, or sample, in accordance with the requirements of such standards, specifications, or instructions: *Provided*, That when inspection for quality is based on any U.S. grade standard which contains a scoring system the grade to be assigned to a lot is the grade indicated by the average of the total scores of the sample units: *Provided further*, That:

(1) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(2) Such sample complies with the product description;

(3) Such sample meets the indicated grade with respect to factors of quality which are not rated by score points; and

(4) With respect to those factors of quality which are rated by score points, each of the following requirements is met:

(i) None of the sample units falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies;

(ii) None of the sample units falls more than 4 score points below the minimum total score for the indicated grade; and

(iii) The number of sample units classed as deviants does not exceed the applicable acceptance number indicated in the sampling plans contained in § 260.61. A "deviant," as used in this paragraph, means a sample unit that falls into the next grade below the indicated grade but does not score more than 4 points below the minimum total score for the indicated grade.

(5) If any of the provisions contained in paragraphs (b)(3) and (4) of this section are not met the grade is determined by considering such provisions in connection with succeeding lower

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grades until the grade of the lot, if assignable, is established.

### **§ 260.22 Order of inspection service.**

Inspection service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

### **§ 260.23 Postponing inspection service.**

If the inspector determines that it is not possible to accurately ascertain the quality or condition of a processed product immediately after processing because the product has not reached equilibrium in color, or drained weight, or for any other substantial reason, he may postpone inspection service for such period as may be necessary.

### **§ 260.24 Financial interest of inspector.**

No inspector shall inspect any processed product in which he is directly or indirectly financially interested.

### **§ 260.25 Forms of certificates.**

Inspection certificates, certificates of sampling or loading, and other memoranda concerning inspection service shall be issued on forms approved by the Secretary.

### **§ 260.26 Issuance of certificates.**

(a) An inspection certificate may be issued only by an inspector: *Provided*, That, another employee of the inspection service may sign any such certificate covering any processed product inspected by an inspector when given power of attorney by such inspector and authorized by the Secretary, to affix the inspector's signature to an inspection certificate which has been prepared in accordance with the facts set forth in the notes, made by the inspector, in connection with the inspection.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: *Provided*, That, another

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employee of the inspection service may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler when given power of attorney by such inspector or licensed sampler and authorized by the Secretary to affix the inspector's or licensed sampler's signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

### **§ 260.27 Issuance of corrected certificates.**

A corrected inspection certificate may be issued by the inspector who issued the original certificate after distribution of a certificate if errors, such as incorrect dates, code marks, grade statements, lot or car numbers, container sizes, net or drained weights, quantities, or errors in any other pertinent information require the issuance of a corrected certificate. Whenever a corrected certificate is issued, such certificate shall supersede the inspection certificate which was issued in error and the superseded certificate shall become null and void after the issuance of the corrected certificate.

### **§ 260.28 Issuance of an inspection report in lieu of an inspection certificate.**

A letter report in lieu of an inspection certificate may be issued by an inspector when such action appears to be more suitable than an inspection certificate: *Provided*, That, the issuance of such report is approved by the Secretary.

### **§ 260.29 Disposition of inspection certificates.**

The original of any inspection certificate, issued under the regulations in this part, and not to exceed four copies thereof, if requested prior to issuance, shall be delivered or mailed promptly to the applicant, or person designated by the applicant. All other copies shall

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be filed in such manner as the Secretary may designate. Additional copies of any such certificates may be supplied to any interested party as provided in § 260.78.

### **§ 260.30 Report of inspection results prior to issuance of formal report.**

Upon request of any interested party, the results of an inspection may be telegraphed or telephoned to him, or to any other person designated by him, at his expense.

#### APPEAL INSPECTION

### **§ 260.36 When appeal inspection may be requested.**

An application for an appeal inspection may be made by any interested party who is dissatisfied with the results of an inspection as stated in an inspection certificate, if the lot of processed products can be positively identified by the inspection service as the lot from which officially drawn samples were previously inspected. Such application shall be made within thirty (30) days following the day on which the previous inspection was performed, except upon approval by the Secretary the time within which an application for appeal inspection may be made, may be extended.

### **§ 260.37 Where to file for an appeal inspection and information required.**

(a) Application for an appeal inspection may be filed with:

(1) The inspector who issued the inspection certificate on which the appeal covering the processed product is requested; or

(2) The inspector in charge of the office of inspection at or nearest the place where the processed product is located.

(b) The application for appeal inspection shall state the location of the lot of processed products and the reasons for the appeal; and date and serial number of the certificate covering inspection of the processed product on which the appeal is requested, and such application may be accompanied by a copy of the previous inspection certificate and any other information that may facilitate inspection. Such application may be made orally (in person

or by telephone), in writing, or by telegraph. If made orally, written confirmation shall be made promptly.

### **§ 260.38 When an application for an appeal inspection may be withdrawn.**

An application for appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: *Provided*, That the applicant shall pay at the hourly rate prescribed in § 260.70, for the time incurred by the inspector in connection with such application, any travel expenses, telephone, telegraph, or other expenses which have been incurred by the inspection service in connection with such application.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

### **§ 260.39 When appeal inspection may be refused.**

An application for an appeal inspection may be refused if:

(a) The reasons for the appeal inspection are frivolous or not substantial;

(b) The quality or condition of the processed product has undergone a material change since the inspection covering the processed product on which the appeal inspection is requested;

(c) The lot in question is not, or cannot be made accessible for the selection of officially drawn samples;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspector as the lot from which officially drawn samples were previously inspected; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

### **§ 260.40 Who shall perform appeal inspection.**

An appeal inspection shall be performed by an inspector or inspectors (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Secretary and, whenever practical, such appeal inspection shall be conducted jointly by two such inspectors: *Provided*, That the inspector who made the inspection on which the appeal is requested may be authorized to draw the samples when

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another inspector or licensed sampler is not available in the area where the product is located.

### **§ 260.41 Appeal inspection certificate.**

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the processed product involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the processed product described therein. The inspector or inspectors issuing an appeal inspection certificate shall forward notice of such issuance to such persons as he considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector or inspectors issuing the appeal inspection certificate. The provisions in the regulations in this part concerning forms of certificates, issuance of certificates, and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished all interested parties who received copies of the superseded certificate.

#### **LICENSING OF SAMPLERS AND INSPECTORS**

### **§ 260.47 Who may become licensed sampler.**

Any person deemed to have the necessary qualifications may be licensed as a licensed sampler to draw samples for the purpose of inspection under the regulations in this part. Such a license shall bear the printed signature of the Secretary, and shall be countersigned by an authorized employee of the Department. Licensed samplers shall have no authority to inspect processed products under the regulations in this part except as to identification and condition of the containers in a lot. A licensed sampler shall perform his duties

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pursuant to the regulations in this part as directed by the Director.

### **§ 260.48 Application to become a licensed sampler.**

Application to become a licensed sampler shall be made to the Secretary on forms furnished for that purpose. Each such application shall be signed by the applicant in his own handwriting, and the information contained therein shall be certified by him to be true, complete, and correct to the best of his knowledge and belief, and the application shall contain or be accompanied by:

(a) A statement showing his present and previous occupations, together with names of all employers for whom he has worked, with periods of service, during the 10 years previous to the date of his application;

(b) A statement that, in his capacity as a licensed sampler, he will not draw samples from any lot of processed products with respect to which he or his employer is an interested party;

(c) A statement that he agrees to comply with all terms and conditions of the regulations in this part relating to duties of licensed samplers; and

(d) Such other information as may be requested.

### **§ 260.49 Inspectors.**

Inspections will ordinarily be performed by employees under the Secretary who are employed as Federal Government employees for that purpose. However, any person employed under any joint Federal-State inspection service arrangement may be licensed, if otherwise qualified, by the Secretary to make inspections in accordance with this part on such processed products as may be specified in his license. Such license shall be issued only in a case where the Secretary is satisfied that the particular person is qualified to perform adequately the inspection service for which such person is to be licensed. Each such license shall bear the printed signature of the Secretary and shall be countersigned by an authorized employee of the Department. An inspector shall perform his duties pursuant to the regulations in this part as directed by the Director.

**§ 260.50 Suspension or revocation of license of licensed sampler or licensed inspector.**

Pending final action by the Secretary, the Director may, whenever he deems such action necessary, suspend the license of any licensed sampler, or licensed inspector, issued pursuant to the regulations in this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by such licensee, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7 day period and consideration of such argument and evidence, the Secretary shall take such action as he deems appropriate with respect to such suspension or revocation.

**§ 260.51 Surrender of license.**

Upon termination of his services as a licensed sampler or licensed inspector, or suspension or revocation of his license, such licensee shall surrender his license immediately to the office of inspection serving the area in which he is located. These same provisions shall apply in a case of an expired license.

## SAMPLING

**§ 260.57 How samples are drawn by inspectors or licensed samplers.**

An inspector or a licensed sampler shall select samples, upon request, from designated lots of processed products which are so placed as to permit thorough and proper sampling in accordance with the regulations in this part. Such person shall, unless otherwise directed by the Secretary, select sample units of such products at random, and from various locations in each lot in such manner and number, not inconsistent with the regulations in this part, as to secure a representative sample of the lot. Samples drawn for inspection shall be furnished by the applicant at no cost to the Department.

**§ 260.58 Accessibility for sampling.**

Each applicant shall cause the processed products for which inspection is requested to be made accessible for proper sampling. Failure to make any lot accessible for proper sampling shall be sufficient cause for postponing inspection service until such time as such lot is made accessible for proper sampling.

**§ 260.59 How officially drawn samples are to be identified.**

Officially drawn samples shall be marked by the inspector or licensed sampler so such samples can be properly identified for inspection.

**§ 260.60 How samples are to be shipped.**

Unless otherwise directed by the Secretary, samples which are to be shipped to any office of inspection shall be forwarded to the office of inspection serving the area in which the processed products from which the samples were drawn is located. Such samples shall be shipped in a manner to avoid, if possible, any material change in the quality or condition of the sample of the processed product. All transportation charges in connection with such shipments of samples shall be at the expense of the applicant and wherever practicable, such charges shall be prepaid by him.

**§ 260.61 Sampling plans and procedures for determining lot compliance.**

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Secretary, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable single sampling plan or, at the discretion of the inspection service, any comparable multiple sampling plan: *Provided*, That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the single sampling plans with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size the lot fails the requirement.

(c) Under the multiple sampling plans inspection commences with the smallest sample size indicated under the appropriate plan and with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered does not exceed the acceptance number prescribed for that sample size the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered equals or exceeds the rejection number prescribed for that sample size the lot fails the requirement; or

(3) If the number of deviants (as defined in connection with the specific requirement) in the sample being considered falls between the acceptance and rejection numbers of the plan, additional sample units are added to the sample so that the sample thus cumulated equals the next larger cumulative sample size in the plan. It may then be determined that the lot meets or fails the specific requirement by considering the cumulative sample and applying the procedures outlined in paragraphs (c)(1) and (2) of this section or by considering successively larger samples cumulated in the same manner until the lot meets or fails the specific requirement.

(d) If in the conduct of any type of in-plant inspection the sample is exam-

ined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot but does not equal any of the prescribed larger sample sizes the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size the lot meets the requirements;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size the lot fails the requirement.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word “deviation” for the word “deviant” wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, V, and VI which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container size and amount of product to be samples.

SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS  
TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

| Container size group                                                                                                                                               | Lot size (number of containers) |              |               |                                 |                 |                 |                 |                              |              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------|---------------|---------------------------------|-----------------|-----------------|-----------------|------------------------------|--------------|--|
|                                                                                                                                                                    |                                 |              |               |                                 |                 |                 |                 |                              |              |  |
| GROUP 1<br>Any type of container of less volume than that of a No. 300 size can (300x407) .....                                                                    | 3,600 or less                   | 3,601–14,400 | 14,401–48,000 | 48,001–96,000<br>96,001–156,000 | 156,001–228,000 | 228,001–300,000 | 300,001–420,000 | Over 420,000                 |              |  |
| GROUP 2<br>Any type of container of a volume equal to or exceeding that of a No. 300 size can, but not exceeding that of a No. 3 cylinder size can (404x700) ..... | 2,400 or less                   | 2,401–12,000 | 12,001–24,000 | 24,001–48,000<br>48,001–72,000  | 72,001–108,000  | 108,001–168,000 | 168,001–240,000 | Over 240,000                 |              |  |
| GROUP 3<br>Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can (603x812) .....              | 1,200 or less                   | 1,201–7,200  | 7,201–15,000  | 15,001–24,000                   | 24,001–36,000   | 36,001–60,000   | 60,001–84,000   | 84,001–120,000               | Over 120,000 |  |
| GROUP 4<br>Any type of container of a volume exceeding that of a No. 12 size can, but not exceeding that of a 5-gallon container .....                             | 200 or less                     | 201–800      | 801–1,600     | 1,601–2,400                     | 2,401–3,600     | 3,601–8,000     | 8,001–16,000    | 16,001–28,000<br>Over 28,000 |              |  |
| GROUP 5<br>Any type of container of a volume exceeding that of a 5-gallon container .....                                                                          | 25 or less                      | 26–80        | 81–200        | 201–400                         | 401–800         | 801–1,200       | 1,201–2,000     | 2,001–3,200                  | Over 3,200   |  |



**SINGLE SAMPLING PLANS AND ACCEPTANCE LEVELS—Continued**  
**TABLE I—CANNED OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE**

| Container size group                                    | Lot size (number of containers) |    |     |     |     |     |     |     |    |  |
|---------------------------------------------------------|---------------------------------|----|-----|-----|-----|-----|-----|-----|----|--|
|                                                         |                                 |    |     |     |     |     |     |     |    |  |
| Single sampling plans <sup>1</sup>                      |                                 |    |     |     |     |     |     |     |    |  |
| Sample size (number of sample units) <sup>2</sup> ..... | 30                              | 61 | 132 | 213 | 294 | 385 | 486 | 607 | 72 |  |
| Acceptance number ....                                  |                                 |    |     |     |     |     |     |     |    |  |

<sup>1</sup> For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

<sup>2</sup> The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

**TABLE II—FROZEN OR SIMILARLY PROCESSED FISHERY PRODUCTS, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE**

| Container size group                                                                     | Lot size (number of containers) |              |               |               |               |                |                 |                 |              |  |
|------------------------------------------------------------------------------------------|---------------------------------|--------------|---------------|---------------|---------------|----------------|-----------------|-----------------|--------------|--|
|                                                                                          |                                 |              |               |               |               |                |                 |                 |              |  |
| Single sampling plans <sup>1</sup>                                                       |                                 |              |               |               |               |                |                 |                 |              |  |
| GROUP 1<br>Any type of container of 1 pound or less net weight .....                     | 2,400 or less                   | 2,401–12,000 | 12,001–24,000 | 24,001–48,000 | 48,001–72,000 | 72,001–108,000 | 108,001–168,000 | 168,001–240,000 | Over 240,000 |  |
| GROUP 2<br>Any type of container over 1 pound but not over 4 pounds net weight .....     | 1,800 or less                   | 1,801–8,400  | 8,401–18,000  | 18,001–36,000 | 36,001–60,000 | 60,001–96,000  | 96,001–132,000  | 132,001–168,000 | Over 168,000 |  |
| GROUP 3<br>Any type of container over 4 pounds but not over 10 pounds net weight .....   | 900 or less                     | 901–3,600    | 3,601–10,800  | 10,801–18,000 | 18,001–36,000 | 36,001–60,000  | 60,001–84,000   | 84,001–120,000  | Over 120,000 |  |
| GROUP 4<br>Any type of container over 10 pounds but not over 100 pounds net weight ..... | 200 or less                     | 201–800      | 801–1,600     | 1,601–2,400   | 2,401–3,600   | 3,601–8,000    | 8,001–16,000    | 16,001–28,000   | Over 28,000  |  |

| GROUP 5<br>Any type of container<br>over 100 pounds net<br>weight ..... | 25 or less | 26-80 | 81-200 | 201-400 | 401-800 | 801-1,200 | 1,201-2,000 | 2,001-3,200 | Over 3,200 |
|-------------------------------------------------------------------------|------------|-------|--------|---------|---------|-----------|-------------|-------------|------------|
| Single sampling plans <sup>1</sup>                                      |            |       |        |         |         |           |             |             |            |
| Sample size (number of<br>sample units) <sup>2</sup> .....              | 3          | 6     | 13     | 21      | 29      | 38        | 48          | 60          | 72         |
| Acceptance number .....                                                 | 0          | 1     | 2      | 3       | 4       | 5         | 6           | 7           | 8          |

<sup>1</sup> For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

<sup>2</sup> The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Groups 4 and 5—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

**TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMUNITED, FLUID, OR HOMOGENEOUS STATE**

| Container size group <sup>1</sup>                                                                                                | Lot size (number of containers) |              |               |                |                 |                 |                 |                 |              |  |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------|---------------|----------------|-----------------|-----------------|-----------------|-----------------|--------------|--|
|                                                                                                                                  |                                 |              |               |                |                 |                 |                 |                 |              |  |
| GROUP 1<br>Any type of container of<br>12 ounces or less .....                                                                   | 5,400 or less                   | 5,401-21,600 | 21,601-62,400 | 62,401-112,000 | 112,001-174,000 | 174,001-240,000 | 240,001-360,000 | 360,001-480,000 | Over 480,000 |  |
| GROUP 2<br>Any type of container<br>over 12 ounces but<br>not over 60 ounces ...                                                 | 3,600 or less                   | 3,601-14,400 | 14,401-48,000 | 48,001-96,000  | 96,001-156,000  | 156,001-228,000 | 228,001-300,000 | 300,001-420,000 | Over 420,000 |  |
| GROUP 3<br>Any type of container<br>over 60 ounces but<br>not over 160 ounces ..                                                 | 1,800 or less                   | 1,801-8,400  | 8,401-18,000  | 18,001-60,000  | 36,001-60,000   | 60,001-96,000   | 96,001-132,000  | 132,001-168,000 | Over 168,000 |  |
| GROUP 4<br>Any type of container<br>over 160 ounces but<br>not over 10 gallons or<br>100 pounds whichever<br>is applicable ..... | 200 or less                     | 201-800      | 801-1,600     | 1,601-3,200    | 3,201-8,000     | 8,001-16,000    | 16,001-24,000   | 24,001-32,000   | Over 32,000  |  |
| GROUP 5<br>Any type of container<br>over 10 gallons or 100<br>pounds whichever is<br>applicable .....                            | 25 or less                      | 26-80        | 81-200        | 201-400        | 401-800         | 801-1,200       | 1,201-2,000     | 2,001-3,200     | Over 3,200   |  |

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FISHERY AND RELATED PRODUCTS, AND PRODUCTS THEREOF OF A COMMINUTED, FLUID, OR HOMOGENEOUS STATE—Continued

| Container size group <sup>1</sup>                       | Lot size (number of containers) |   |    |    |    |    |    |    |    |  |
|---------------------------------------------------------|---------------------------------|---|----|----|----|----|----|----|----|--|
|                                                         |                                 |   |    |    |    |    |    |    |    |  |
| Single sampling plans <sup>2</sup>                      |                                 |   |    |    |    |    |    |    |    |  |
| Sample size (number of sample units) <sup>3</sup> ..... | 3                               | 6 | 13 | 21 | 29 | 38 | 48 | 60 | 72 |  |
| Acceptance number .....                                 | 0                               | 1 | 2  | 3  | 4  | 5  | 6  | 7  | 8  |  |

<sup>1</sup> Ounces pertain to either fluid ounces of volume or avoirdupois ounces of net weight whichever is applicable for the product involved.

<sup>2</sup> For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

<sup>3</sup> The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Groups 4, 5, and 6—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV—DEHYDRATED FISHERY AND RELATED PRODUCTS

| Container size group                                                                      | Lot size (number of containers) |             |              |               |               |               |                |                 |              |  |
|-------------------------------------------------------------------------------------------|---------------------------------|-------------|--------------|---------------|---------------|---------------|----------------|-----------------|--------------|--|
|                                                                                           |                                 |             |              |               |               |               |                |                 |              |  |
| GROUP 1<br>Any type of container of 1 pound or less<br>net weight .....                   | 1,800 or less                   | 1,801–8,400 | 8,401–18,000 | 18,001–36,000 | 36,001–60,000 | 60,001–96,000 | 96,001–132,000 | 132,001–168,000 | Over 168,000 |  |
| GROUP 2<br>Any type of container over 1 pound but not over 6 pounds<br>net weight .....   | 900 or less                     | 901–3,600   | 3,601–10,800 | 10,801–18,000 | 18,001–36,000 | 36,001–60,000 | 60,001–84,000  | 84,001–120,000  | Over 120,000 |  |
| GROUP 3<br>Any type of container over 6 pounds but not over 20 pounds<br>net weight ..... | 200 or less                     | 201–800     | 801–1,600    | 1,601–3,200   | 3,201–8,000   | 8,001–16,000  | 16,001–24,000  | 24,001–32,000   | Over 32,000  |  |
| GROUP 4<br>Any type of container over 20 pounds but not over 100 pounds net weight ..     | 48 or less                      | 49–400      | 401–1,200    | 1,201–2,000   | 2,001–2,800   | 2,801–6,000   | 6,001–9,600    | 9,601–15,000    | Over 15,000  |  |

| GROUP 5<br>Any type of container<br>over 100 pounds<br>net weight ..... | Single sampling plans <sup>1</sup> |       |        |         |         |           |             |             |            |  |
|-------------------------------------------------------------------------|------------------------------------|-------|--------|---------|---------|-----------|-------------|-------------|------------|--|
|                                                                         | 16 or less                         | 17-80 | 81-200 | 201-400 | 401-800 | 801-1,200 | 1,201-2,000 | 2,001-3,200 | Over 3,200 |  |

| Sample size (number<br>of sample units) <sup>2</sup> ....<br>Acceptance number ... | Single sampling plans <sup>1</sup> |        |         |         |         |         |         |         |         |  |
|------------------------------------------------------------------------------------|------------------------------------|--------|---------|---------|---------|---------|---------|---------|---------|--|
|                                                                                    | 3<br>0                             | 6<br>1 | 13<br>2 | 21<br>3 | 29<br>4 | 38<br>5 | 48<br>6 | 60<br>7 | 72<br>8 |  |

<sup>1</sup> For extension of the single sample sizes beyond 72 sample units, refer to table V of this section; for multiple sampling plans comparable to the various single sampling plans refer to table VI of this section.

<sup>2</sup> The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2, 3, 4, and 5—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

TABLE V—SINGLE SAMPLING PLANS FOR USE IN INCREASING SAMPLE SIZE BEYOND 72 SAMPLE UNITS

| Sample size, $n$ .....        | 84 | 96 | 108 | 120 | 132 | 144 | 156 | 168 | 180 | 192 | 204 | 216 | 230 | 244 | 258 | 272 | 286 | 300 | 314 | 328 | 342 | 356 | 370 | 384 | 400 |
|-------------------------------|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Acceptance numbers, $c$ ..... | 9  | 10 | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  | 22  | 23  | 24  | 25  | 26  | 27  | 28  | 29  | 30  | 31  | 32  | 33  |

MULTIPLE SAMPLING PLANS<sup>1</sup>, p0.6/7

TABLE VI—MULTIPLE SAMPLING PLANS COMPARABLE TO THE INDICATED SINGLE SAMPLING PLANS

|                                                                                                                    |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |
|--------------------------------------------------------------------------------------------------------------------|-------|-----|-----|-------|-----|-----|-------|-----|-----|-------|-----|-----|-------|-----|-----|-------|-----|-----|-------|-----|-----|-------|-----|-----|
| Indicated single sampling plan:                                                                                    |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |       |     |     |
| Single sample size, $n$ .....                                                                                      |       | 6   |     | 13    |     | 21  |       | 29  |     | 38    |     | 48  |       | 60  |     | 72    |     |     |       |     |     |       |     |     |
| Acceptance numbers, $c$ .....                                                                                      |       | 1   |     | 2     |     | 3   |       | 4   |     | 5     |     | 6   |       | 7   |     | 8     |     |     |       |     |     |       |     |     |
| Cumulative sample sizes, $n_c$ , and acceptance numbers, $c$ , and rejection numbers, $r$ , for multiple sampling. | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ | $n_c$ | $c$ | $r$ |
|                                                                                                                    | 4     | 0   | 2   | 8     | 0   | 3   | 10    | 0   | 3   | 12    | 0   | 4   | 14    | 0   | 4   | 16    | 0   | 4   | 18    | 0   | 5   | 22    | 0   | 5   |
|                                                                                                                    | 6     | 0   | 2   | 10    | 0   | 3   | 14    | 1   | 4   | 16    | 0   | 4   | 20    | 0   | 5   | 24    | 1   | 5   | 28    | 1   | 6   | 32    | 1   | 7   |
|                                                                                                                    | 8     | 1   | 2   | 12    | 1   | 3   | 18    | 1   | 4   | 20    | 1   | 5   | 26    | 1   | 6   | 32    | 2   | 6   | 38    | 2   | 7   | 42    | 2   | 8   |
|                                                                                                                    |       |     |     | 14    | 2   | 3   | 22    | 2   | 5   | 24    | 2   | 5   | 32    | 2   | 6   | 40    | 3   | 8   | 48    | 3   | 8   | 52    | 3   | 9   |
|                                                                                                                    |       |     |     |       |     |     | 26    | 4   | 5   | 28    | 3   | 6   | 38    | 3   | 7   | 48    | 4   | 8   | 58    | 4   | 8   | 62    | 5   | 10  |
|                                                                                                                    |       |     |     |       |     |     |       |     |     | 32    | 3   | 6   | 44    | 6   | 7   | 56    | 7   | 8   | 68    | 8   | 9   | 72    | 6   | 10  |
|                                                                                                                    |       |     |     |       |     |     |       |     |     | 36    | 5   | 6   |       |     |     |       |     |     |       |     |     | 82    | 9   | 10  |

<sup>1</sup> These multiple sampling plans may be used in lieu of the single sampling plans listed at the heading of each column.

## **§ 260.62**

### **§ 260.62 Issuance of certificate of sampling.**

Each inspector and each licensed sampler shall prepare and sign a certificate of sampling to cover the samples drawn by the respective person, except that an inspector who inspects the samples which he has drawn need not prepare a certificate of sampling. One copy of each certificate of sampling prepared shall be retained by the inspector or licensed sampler (as the case may be) and the original and all other copies thereof shall be disposed of in accordance with the instructions of the Secretary.

### **§ 260.63 Identification of lots sampled.**

Each lot from which officially drawn samples are selected shall be marked in such manner as may be prescribed by the Secretary, if such lots do not otherwise possess suitable identification.

#### **FEES AND CHARGES**

### **§ 260.69 Payment fees and charges.**

Fees and charges for any inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of the regulations in this part, and, if so required by the person in charge of the office of inspection serving the area where the services are to be performed, an advance of funds prior to rendering inspection service in an amount suitable to the Secretary, or a surety bond suitable to the Secretary, may be required as a guarantee of payment for the services rendered. All fees and charges for any inspection service, performed pursuant to the regulations in this part shall be paid by check, draft, or money order made payable to the National Marine Fisheries Service. Such check, draft, or money order shall be remitted to the appropriate regional or area office serving the geographical area in which the services are performed, within ten (10) days from the date of billing, unless otherwise specified in a contract between the applicant and the Secretary, in which latter event the contract provisions shall apply.

[36 FR 21033, Nov. 3, 1971]

## **50 CFR Ch. II (10–1–12 Edition)**

### **§ 260.70 Schedule of fees.**

(a) Unless otherwise provided in a written agreement between the applicant and the Secretary, the fees to be charged and collected for any inspection service performed under the regulations in this part at the request of the United States, or any other agency or instrumentality thereof, will be published as a notice in the FEDERAL REGISTER and will be in accordance with § 260.81.

(b) Fees are reviewed annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered.

(1) The TYPE I (Contract Inspection) hourly fee is determined by dividing the estimated annual costs by the estimated annual billable hours.

(2) The TYPE II (Lot Inspection) hourly fee is determined by adding a factor of 50 percent to the TYPE I fee, to cover additional costs (down-time, etc.) associated with conducting lot inspection services.

(3) The TYPE III (Miscellaneous and Consulting) hourly fee is determined by adding a factor of 25 percent to the TYPE I fee, to cover the additional costs (down-time, etc.) associated with conducting miscellaneous inspection services.

[48 FR 24901, June 3, 1983]

### **§ 260.71 [Reserved]**

### **§ 260.72 Fees for inspection service performed under cooperative agreement.**

The fees to be charged and collected for any inspection or similar service performed under cooperative agreement shall be those provided for by such agreement.

### **§ 260.73 Disposition of fees for inspections made under cooperative agreement.**

Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted in accordance with § 260.69.

**§ 260.74 Fee for appeal inspection.**

The fee to be charged for an appeal inspection shall be at the rates prescribed in this part for other inspection services: *Provided*, That, if the result of any appeal inspection made for any applicant, other than the United States or any agency or instrumentality thereof, discloses that a material error was made in the inspection on which the appeal is made, no inspection fee shall be assessed.

**§ 260.76 [Reserved]****§ 260.77 Fees for score sheets.**

If the applicant for inspection service requests score sheets showing in detail the inspection of each container or sample inspected and listed thereon, such score sheets may be furnished by the inspector in charge of the office of inspection serving the area where the inspection was performed; and such applicant shall be charged at the rate of \$2.75 for each 12 sampled units, or fraction thereof, inspected and listed on such score sheets.

**§ 260.78 Fees for additional copies of inspection certificates.**

Additional copies of any inspection certificate other than those provided for in § 260.29, may be supplied to any interested party upon payment of a fee of \$2.75 for each set of five (5) or fewer copies.

**§ 260.79 Travel and other expenses.**

Charges may be made to cover the cost of travel and other expenses incurred in connection with the performance of any inspection service, including appeal inspections: *Provided*, That, if charges for sampling or inspection are based on an hourly rate, an additional hourly charge may be made for travel time including time spent waiting for transportation as well as time spent traveling, but not to exceed 8 hours of travel time for any one person for any one day: *And provided further*, That, if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

**§ 260.80 Charges for inspection service on a contract basis.**

Irrespective of fees and charges prescribed in the foregoing sections, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as revised (16 U.S.C. 661 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the National Marine Fisheries Service of the Department for the full cost of rendering such inspection service as may be determined by the Secretary. Likewise, the Secretary may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with the administration of a similar program operated pursuant to the laws of any State.

[36 FR 21038, Nov. 3, 1971]

**§ 260.81 Readjustment and increase in hourly rates of fees.**

(a) When Federal Pay Act increases occur, the hourly rates for inspection fees will automatically be increased on the effective date of the pay act by an amount equal to the increase received by the average GS grade level of fishery product inspectors receiving such pay increases.

(b) The hourly rates of fees to be charged for inspection services will be subject to review and reevaluation for possible readjustment not less than every 3 years: *Provided*, That, the hourly rates of fees to be charged for inspection services will be immediately reevaluated as to need for readjustment with each Federal Pay Act increase.

[35 FR 15925, Oct. 9, 1970]

## MISCELLANEOUS

**§ 260.84 Policies and procedures.**

The policies and procedures pertaining to any of the inspection services are contained within the NMFS Fishery Products Inspection Manual.

## § 260.86

The policies and procedures are available from the Secretary to any interested party by writing to Document Approval and Supply Services Branch, Inspection Services Division, P.O. Drawer 1207, 3207 Frederic St., Pascagoula, MS 39568-1207.

[61 FR 9369, Mar. 8, 1996]

### § 260.86 Approved identification.

(a) *Grade marks:* The approved grade mark or identification may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by an inspector as meeting the requirements of such grade, quality or classification.

The grade marks approved for use shall be similar in form and design to the examples of Figures 1 to 5 of this section.

Shield using red, white, and blue background or other colors appropriate for label.

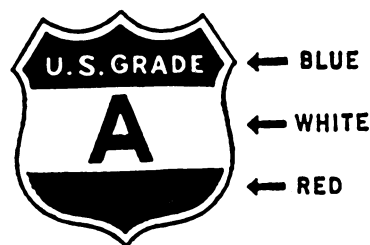


FIGURE 1

## 50 CFR Ch. II (10-1-12 Edition)

Shield with plain background.



FIGURE 2

---

U.S. GRADE A

---

FIGURE 3

U.S.  
GRADE  
B

FIGURE 4

U.S.  
GRADE  
C

FIGURE 5

(b) *Inspection marks:* The approved inspection marks may be used on containers, labels, or otherwise indicated for any processed product that:

(1) Has been packed under inspection as provided in this part to assure compliance with the requirements for wholesomeness established for the raw product and of sanitation established for the preparation and processing operations, and (2) has been certified by

an inspector as meeting the requirements of such quality or grade classification as may be approved by the Secretary.

The inspection marks approved for use shall be similar in form and design to the examples in Figures 6, 7, and 8 of this section.

Statement enclosed within a circle.



FIGURE 6

Statement without the use of the circle.

PACKED UNDER  
FEDERAL  
INSPECTION  
U.S. DEPARTMENT  
OF COMMERCE

FIGURE 7

Statement without the use of the circle.

PACKED BY  
-----  
-----  
UNDER FEDERAL INSPECTION  
U.S. DEPT. OF COMMERCE

FIGURE 8

(c) *Combined grade and inspection marks:* The grade marks set forth in paragraph (a) of this section, and the

inspection marks, Figures 7 and 8, set forth in paragraph (b) of this section, may be combined into a consolidated grade and inspection mark for use on processed products that have been packed under inspection as provided in this part.

(d) *Products not eligible for approved identification:* Processed products which have not been packed under inspection as provided in this part shall not be identified by approved grade or inspection marks, but such products may be inspected on a lot inspection basis as provided in this part and identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) as appropriate, with marks similar in form and design to the examples in Figures 9 and 10 of this section.



FIGURE 9





FIGURE 10

(e) *Removal of labels bearing inspection marks:* At the time a lot of fishery products is found to be mislabeled and the labels on the packages are not removed within ten (10) consecutive calendar days, the following procedure shall be applicable:

(1) The processor, under the supervision of the inspector, shall clearly and conspicuously mark all master cases in the lot by means of a “rejected by USDC Inspector” stamp provided by the Department.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products are properly labeled.

(3) Clearance for the release of the relabeled products shall be obtained by the processor from the inspector.

(f) Users of inspection services having an inventory of labels which bear official approved identification marks stating “U.S. Department of the Interior” or otherwise referencing the Interior Department, will be permitted to use such marks until December 31, 1971, except that upon written request the Director, National Marine Fisheries Service, may extend such period for the use of specific labels.

[36 FR 4609, Mar. 10, 1971]

**§ 260.88 Political activity.**

All inspectors and licensed samplers are forbidden, during the period of their respective appointments or li-

censes, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, are prohibited. This applies to all appointees or licensees, including, but not limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

**§ 260.90 Compliance with other laws.**

None of the requirements in the regulations in this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to the operation of food processing establishments and to processed food products.

**§ 260.91 Identification.**

Each inspector and licensed sampler shall have in his possession at all times and present upon request, while on duty, the means of identification furnished by the Department to such person.

**§ 260.93 Debarment and suspension.**

(a) *Debarment.* Any person may be debarred from using or benefiting from the inspection service provided under the regulations of this subchapter or under the terms of any inspection contract, and such debarment may apply to one or more plants under his control, if such person engages in one or more of the following acts or activities:

(1) Misrepresenting, misstating, or withholding any material or relevant facts or information in conjunction with any application or request for an inspection contract, inspection service, inspection appeal, lot inspection, or other service provided for under the regulations of this subchapter.

(2) Using on a processed product any label which displays any official identification, official device, or official mark, when the label is not currently approved for use by the Director or his delegate.

(3) Using on a processed product any label which displays the words "Packed Under Federal Inspection, U.S. Department of Commerce", or which displays any official mark, official device, or official identification, or which displays a facsimile of the foregoing, when such product has not been inspected under the regulations of this subchapter.

(4) Making any statement or reference to the U.S. Grade of any processed product or any inspection service provided under the regulations of this subchapter on the label or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(5) Making, using, issuing or attempting to issue or use in conjunction with the sale, shipment, transfer or advertisement of a processed product any certificate of loading, certificate of sampling, inspection certificate, official device, official identification, official mark, official document, or score sheet which has not been issued, approved, or authorized for use with such product by an inspector.

(6) Using any of the terms "United States", "Officially graded", "Officially inspected", "Government inspected", "Federally inspected", "Officially sampled", or words of similar import or meanings, or using any official device, official identification, or official mark on the label, on the shipping container, or in the advertising of any processed product, when such product has not been inspected under the regulations of this subchapter.

(7) Using, attempting to use, altering or reproducing any certificate, certificate form, design, insignia, mark, shield, device, or figure which simulates in whole or in part any official mark, official device, official identification, certificate of loading, certificate of sampling, inspection certificate or other official certificate issued pursuant to the regulations of this subchapter.

(8) Assaulting, harassing, interfering, obstructing or attempting to interfere or obstruct any inspector or sampler in the performance of his duties under the regulations of this subchapter.

(9) Violating any one or more of the terms of any inspection contract or the

provisions of the regulations of this subchapter.

(10) Engaging in acts or activities which destroy or interfere with the purposes of the inspection program or which have the effect of undermining the integrity of the inspection program.

(b) *Temporary suspension.* (1) Whenever the Director has reasonable cause to believe that any person has engaged in any act or activity described in paragraph (a) of this section, and in such act or activity, in the judgment of the Director, would cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter, the Director may, without a hearing, temporarily suspend, either before or after the institution of a debarment hearing, the inspection service provided under the regulations of this subchapter or under any inspection contract for one or more plants under the control of such person. Notice of suspension shall be served by registered or certified mail, return receipt requested, and the notice shall specifically state those acts or activities of such person which are the bases for the suspension. The suspension shall become effective five (5) days after receipt of the notice.

(2) Once a person has received a notice of a temporary suspension, a debarment hearing will be set for 30 days after the effective date of the suspension. Within 60 days after the completion of the debarment hearing, the Hearing Examiner shall determine, based upon evidence of record, whether the temporary suspension shall be continued or terminated. A temporary suspension shall be terminated by the Hearing Examiner if he determines that the acts or activities, which were the bases for the suspension, did not occur or will not cause serious and irreparable injury to the inspection program and services provided under the regulations of this subchapter. This determination of the Hearing Examiner on the continuation or termination of the temporary suspension shall be final and there shall be no appeal of this determination. The initial decision by the Hearing Examiner on the debarment shall be made in accordance with

paragraph (b)(1), *Decisions*, of this section.

(3) After a debarment hearing has been instituted against any person by a suspension, such suspension will remain in effect until a final decision is rendered on the debarment in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(4) When a debarment hearing has been instituted against any person not under suspension, the Director may, in accordance with the regulations of this paragraph (b) temporarily suspend such person, and the suspension will remain in effect until a final decision on the debarment is rendered in accordance with the regulations of this section or the temporary suspension is terminated by the Hearing Examiner.

(c) *Hearing Examiner.* All hearing shall be held before a Hearing Examiner appointed by the Secretary or the Director.

(d) *Hearing.* If one or more of the acts or activities described in paragraph (a) of this section have occurred, the Director may institute a hearing to determine the length of time during which the person shall be debarred and those plants to which the debarment shall apply. No person may be debarred unless there is a hearing, as prescribed in this section, and it has been determined by the Hearing Examiner, based on evidence of record, that the one or more of the activities described in paragraph (a) of this section have occurred. Any debarment or suspension must be instituted within two (2) years of the time when such acts or activities described in paragraph (a) of this section have occurred.

(e) *Notice of hearing.* The Director shall notify such person of the debarment hearing by registered or certified mail, return receipt requested. The notice shall set forth the time and place of the hearing, the specific acts or activities which are the basis for the debarment hearing, the time period of debarment being sought, and those plants to which the debarment shall apply. Except for the debarment hearing provided for in paragraph (b) of this section the hearing will be set for a time not longer than 120 days after receipt of the notice of hearing.

(f) *Time and place of hearing.* The hearing shall be held at a time and place fixed by the Director: *Provided, however,* The Hearing Examiner may, upon a proper showing of inconvenience, change the time and place of the hearing. Motions for change of time or place of the hearing must be mailed to or served upon the Hearing Examiner no later than 10 days before the hearing.

(g) *Right to counsel.* In all proceedings under this section, all persons and the Department of Commerce shall have the right to be represented by counsel, in accordance with the rules and regulations set forth in title 43, Code of Federal Regulations, part 1.

(h) *Form, execution, and service of documents.* (1) All papers to be filed under the regulations in this section shall be clear and legible; and shall be dated, signed in ink, contain the docket description and title of the proceeding, if any, and the address of the signatory. Five copies of all papers are required to be filed. Documents filed shall be executed by:

- (i) The person or persons filing same,
- (ii) by an authorized officer thereof if it be a corporation or,
- (iii) by an attorney or other person having authority with respect thereto.

(2) All documents, when filed, shall show that service has been made upon all parties to the proceeding. Such service shall be made by delivering one copy to each party in person or by mailing by first-class mail, properly addressed with postage prepaid. When a party has appeared by attorney or other representative, service on such attorney or other representative will be deemed service upon the party. The date of service of document shall be the day when the matter served is deposited in the U.S. mail, shown by the postmark thereon, or is delivered in person, as the case may be.

(3) A person is deemed to have appeared in a hearing by the filing with the Director a written notice of his appearance or his authority in writing to appear on behalf of one of the persons to the hearing.

(4) The original of every document filed under this section and required to

be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by: (1) Mailing postage prepaid, (2) delivering in person, a copy to each party.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Signature \_\_\_\_\_

(i) *Procedures and evidence.* (1) All parties to a hearing shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the Hearing Examiner at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary.

(j) *Duties of Hearing Examiner.* The Hearing Examiner shall have the authority and duty to:

(1) Take or cause depositions to be taken.

(2) Regulate the course of the hearings.

(3) Prescribe the order in which evidence shall be presented.

(4) Dispose of procedural requests or similar matters.

(5) Hear and initially rule upon all motions and petitions before him.

(6) Administer oaths and affirmations.

(7) Rule upon offers of proof and receive competent, relevant, material, reliable, and probative evidence.

(8) Control the admission of irrelevant, immaterial, incompetent, unreliable, repetitious, or cumulative evidence.

(9) Hear oral arguments if the Hearing Examiner determined such requirement is necessary.

(10) Fix the time for filing briefs, motions, and other documents to be filed in connection with hearings.

(11) Issue the initial decision and dispose of any other pertinent matters that normally and properly arise in the course of proceedings.

(12) Do all other things necessary for an orderly and impartial hearing.

(k) *The record.* (1) The Director will designate an official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and briefs filed therewith, shall be filed with the Director. Transcripts of testimony will be available in any proceeding under the regulations of this section, at rates fixed by the contract between the United States of America and the reporter. If the reporter is an employee of the Department of Commerce, the rate will be fixed by the Director.

(2) The transcript of testimony and exhibits, together with all briefs, papers, and all rulings by the Hearing Examiner shall constitute the record. The initial decision will be predicated on the same record, as will be final decision.

(l) *Decisions.* (1) The Hearing Examiner shall render the initial decision in all debarment proceedings before him. The same Hearing Examiner who presides at the hearing shall render the initial decision except when such Examiner becomes unavailable to the Department of Commerce. In such case, another Hearing Examiner will be designated by the Secretary or Director to render the initial decision. Briefs, or other documents, to be submitted after the hearing must be received not later than twenty (20) days after the hearing, unless otherwise extended by the Hearing Examiner upon motion by a party. The initial decision shall be made within sixty (60) days after the receipt of all briefs. If no appeals from the initial decision is served upon the Director within ten (10) days of the date of the initial decision, it will become the final decision on the 20th day following the date of the initial decision. If an appeal is received, the appeal will be transmitted to the Secretary who will render the final decision after considering the record and the appeal.

(2) All initial and final decisions shall include a statement of findings and conclusions, as well as the reasons or bases therefore, upon the material

## § 260.96

issues presented. A copy of each decision shall be served on the parties to the proceeding, and furnished to interested persons upon request.

(3) It shall be the duty of the Hearing Examiner, and the Secretary where there is an appeal, to determine whether the person has engaged in one or more of the acts or activities described in paragraph (a) of this section, and, if there is a finding that the person has engaged in such acts or activities, the length of time the person shall be debarred, and the plants to which the debarment shall apply.

[31 FR 16052, Dec. 15, 1966, as amended at 36 FR 18738, Sept. 21, 1971]

### REQUIREMENTS FOR PLANTS OPERATING UNDER CONTINUOUS INSPECTION ON A CONTRACT BASIS<sup>1</sup>

#### § 260.96 Application for fishery products inspection service on a contract basis at official establishments.

Any person desiring to process and pack products in an establishment under fishery products inspection service on a contract basis, must receive approval of such buildings and facilities as an official establishment prior to the inauguration of such service. An application for inspection service to be rendered in an establishment shall be approved according to the following procedure:

(a) Initial survey: When application has been filed for inspection service as aforesaid, NMFS inspector(s) shall examine the buildings, premises, and facilities according to the requirements of the fishery products inspection service and shall specify any additional facilities required for the service.

(b) Final survey and establishment approval: Prior to the inauguration of the fishery products inspection service, a final survey of the buildings, premises, and facilities shall be made to verify that the buildings are constructed and facilities are in accord-

<sup>1</sup>Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such establishments and operations.

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ance with the approved drawings and the regulations in this part.

(c) Drawings and specifications of new construction or proposed alterations of existing official establishments shall be furnished to the Director in advance of actual construction for prior approval with regard to compliance with requirements for facilities.

[36 FR 21039, Nov. 3, 1971]

#### § 260.97 Conditions for providing fishery products inspection service at official establishments.

(a) The determination as to the inspection effort required to adequately provide inspection service at any establishment will be made by NMFS. The man-hours required may vary at different official establishments due to factors such as, but not limited to, size and complexity of operations, volume and variety of products produced, and adequacy of control systems and co-operation. The inspection effort requirement may be reevaluated when the contracting party or NMFS deems there is sufficient change in production, equipment and change of quality control input to warrant reevaluation. Inspectors will not be available to perform any of employee or management duties, however, they will be available for consultation purposes. NMFS reserves the right to reassign inspectors as it deems necessary.

(b) NMFS shall not be held responsible:

(1) For damages occurring through any act of commission or omission on the part of its inspectors when engaged in performing services; or

(2) For production errors, such as processing temperatures, length of process, or misbranding of products; or

(3) For failure to supply enough inspection effort during any period of service.

(c) The contracting party will:

(1) Use only wholesome raw material which has been handled or stored under sanitary conditions and is suitable for processings; maintain the official establishment(s), designated on the contract in such sanitary condition and to employ such methods of handling raw

materials for processing as may be necessary to conform to the sanitary requirements prescribed or approved by NMFS;

(2) Adequately code each primary container and master case of products sold or otherwise distributed from a manufacturing, processing, packing, or repackaging activity to enable positive lot identification to facilitate, where necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use;

(3) Not permit any labels on which reference is made to Federal inspection, to be used on any product which is not packed under fishery products inspection service nor permit any labels on which reference is made to any U.S. Grade to be used on any product which has not been officially certified as meeting the requirements of such grade; nor supply labels bearing reference to Federal inspection to another establishment unless the products to which such labels are to be applied have been packed under Federal inspection at an official establishment;

(4) Not affix any label on which reference is made to Federal inspection to any container of processed foods, produced in any designated official establishment, with respect to which the grade of such product is not certified because of adulteration due to the presence of contaminants in excess of limits established in accordance with the regulations or guidelines issued pursuant to the Food, Drug, and Cosmetic Act, as amended;

(5) Not, with respect to any product for which U.S. Grade Standards are in effect, affix any label on which reference is made to Federal inspection to any container of processed food which is substandard: *Provided*, That such label may be affixed to any container of such substandard quality product if such label bears a statement to indicate the substandard quality;

(6) Not, with respect to any product for which U.S. Grade Standard are not in effect, affix any label on which reference is made to the Federal inspection to containers of processed foods, except with the approval of NMFS;

(7) Furnish such reports of processing, packaging, grading, laboratory

analyses, and output of products inspected, processed, and packaged at the designated official establishment(s) as may be requested by NMFS, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942;

(8) Make available for use by inspectors, adequate office space in the designated official establishment(s) and furnish suitable desks, office equipment, and files for the proper care and storage of inspection records;

(9) Make laboratory facilities and necessary equipment available for the use of inspectors to inspect samples of processed foods and/or components thereof;

(10) Furnish and provide laundry service, as required by NMFS, for coats, trousers, smocks, and towels used by inspectors during performance of duty in official establishment(s);

(11) Furnish stenographic and clerical assistance as may be necessary in the typing of certificates and reports and the handling of official correspondence, as well as furnish the labor incident to the drawing and grading of samples and other work required to facilitate adequate inspection procedures whenever necessary;

(12) Submit to NMFS, three (3) copies of new product specifications in a manner prescribed by NMFS, and three (3) end-product samples for evaluation and/or laboratory analysis on all products for approval, for which U.S. Grade Standards are not available, when inspection is to be applied to such products. If requested of NMFS, such new specifications and end-product samples shall be considered confidential;

(13) Submit, as required by NMFS, for approval, proofs prior to printing and thereafter four (4) copies of any finished label which may or may not bear official identification marks, when such products are packed under Federal inspection on a contract basis;

(14) Not make deceptive, fraudulent, or unauthorized use in advertising, or otherwise, of the fishery products inspection service, the inspection certificates or reports issued, or the containers on which official identification marks are embossed or otherwise identified, in connection with the sale of any processed products;

(15) Submit to NMFS, four (4) copies of each label which may or may not bear official identification marks, when such labels are to be withdrawn from inspection or when approved labels are disapproved for further use under inspection;

(16) Notify NMFS in advance of the proposed use of any labels which require obliteration of any official identification marks, and all reference to the inspection service on approved labels which have been withdrawn or disapproved for use;

(17) Accord representatives of NMFS at all reasonable times free and immediate access to establishment(s) and official establishment(s) under applicant's control for the purpose of checking codes, coded products, coding devices, coding procedures, official identification marks obliteration, and use of withdrawn or disapproved labels.

(d) Termination of inspection services:

(1) The fishery products inspection service, including the issuance of inspection reports, shall be rendered from the date of the commencement specified in the contract and continue until suspended or terminated:

(i) By mutual consent;

(ii) by either party giving the other party sixty (60) days' written notice specifying the date of suspension or termination;

(iii) by one (1) day's written notice by NMFS in the event the applicant fails to honor any invoice within ten (10) days after date of receipt of such invoice covering the full costs of the inspection service provided, or in the event the applicant fails to maintain its designated plants in a sanitary condition or to use wholesome raw materials for processing as required by NMFS, or in the event the applicant fails to comply with any provisions of the regulations contained in this part;

(iv) by automatic termination in case of bankruptcy, closing out of business, or change in controlling ownership.

(2) In case the contracting party wishes to terminate the fishery products inspection service under the terms of paragraph (d)(1)(i) or (ii) of this section, either the service must be continued until all unused containers, labels, and advertising material on hand or in

possession of his supplier bearing official identification marks, or reference to fishery products inspection service have been used, or said containers, labels, and advertising material must be destroyed, or official identification marks, and all other reference to the fishery products inspection service on said containers, labels, advertising material must be obliterated, or assurance satisfactory to NMFS must be furnished that such containers, labels, and advertising material will not be used in violation of any of the provisions of the regulations in the part.

(3) In case the fishery products inspection service is terminated for cause by NMFS under the terms of paragraph (d)(1)(iii) of this section, or in case of automatic termination under terms of paragraph (d)(1)(iv) of this section, the contracting party must destroy all unused containers, labels, and advertising material on hand bearing official identification marks, or reference to fishery products inspection service, or must obliterate official identification marks, and all reference to the fishery products inspection service on said containers, labels and advertising material.

After termination of the fishery products inspection service, NMFS may, at such time or times as it may determine to be necessary, during regular business hours, enter the establishment(s) or other facilities in order to ascertain that the containers, labels, and advertising material have been altered or disposed of in the manner provided herein, to the satisfaction of NMFS.

[36 FR 21039, Nov. 3, 1971]

**§ 260.98 Premises.**

The premises about an official establishment shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(a) Strong offensive odors;

(b) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(c) Excessively dusty roads, yards, or parking lots that may constitute a

source of contamination in areas where food is exposed;

(d) Inadequately drained areas that may contribute contamination to food products through seepage or foot-borne filth and by providing a breeding place for insects or micro-organisms;

If the grounds of an official establishment are bordered by grounds not under the official establishment operator's control of the kind described in paragraphs (b) through (d) of this section, care must be exercised in the official establishment by inspection, extermination, or other means to effect exclusion of pests, dirt, and other filth that may be a source of food contamination.

[36 FR 21040, Nov. 3, 1971]

**§ 260.99 Buildings and structures.**

The buildings and structures shall be properly constructed and maintained in a sanitary condition, including, but not limited to the following requirements:

(a) *Lighting.* There shall be sufficient light (1) consistent with the use to which the particular portion of the building is devoted, and (2) to provide for efficient cleaning. Belts and tables on which picking, sorting, or trimming operations are carried on shall be provided with sufficient nonglaring light to insure adequacy of the respective operation. Light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation shall be of the safety type or otherwise protected to prevent food contamination in case of breakage.

(b) *Ventilation.* There shall be sufficient ventilation in each room and compartment thereof to prevent excessive condensation of moisture and to insure sanitary and suitable processing and operating conditions. If such ventilation does not prevent excessive condensation, the Director may require that suitable facilities be provided to prevent the condensate from coming in contact with equipment used in processing operations and with any ingredient used in the manufacture or production of a processed product.

(c) *Drains and gutters.* All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the

quick runoff of all water from official establishment buildings, and surface water around buildings and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard. Tanks or other equipment whose drains are connected to the waste system must have such screens and vacuum breaking devices affixed so as to prevent the entrance of waste water, material, and the entrance of vermin to the processing tanks or equipment.

(d) *Water supply.* There shall be ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (1) distribution throughout buildings, and (2) protection against contamination and pollution.

Sea water of safe suitable and sanitary quality may be used in the processing of various fishery products when approved by NMFS prior to use.

(e) *Construction.* Roofs shall be weathertight. The walls, ceilings, partitions, posts, doors, and other parts of all buildings and structures shall be of such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material, shall have good surface drainage, and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(f) *Processing rooms.* Each room and each compartment in which any processed products are handled, processed, or stored (1) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character; (2) shall be free from objectional odors and vapors; and (3) shall be maintained in a clean and sanitary condition.

(g) *Prevention of animals and insects in official establishment(s).* Dogs, cats, birds, and other animals (including, but not being limited to rodents and insects) shall be excluded from the rooms from which processed products are being prepared, handled, or stored and from any rooms from which ingredients (including, but not being limited to salt, sugar, spices, flour, batter, breeding, and fishery products) are handled and stored. Screens, or other



## § 260.100

devices, adequate to prevent the passage of insects shall, where practical, be provided for all outside doors and openings. The use of chemical compounds such as cleaning agents, insecticides, bactericides, or rodent poisons shall not be permitted except under such precautions and restrictions as will prevent any possibility of their contamination of the processed product. The use of such compounds shall be limited to those circumstances and conditions as approved by NMFS.

(h) *Inspector's office.* Furnished suitable and adequate office space, including, but not being limited to, light, heat, and janitor service shall be provided rent free in official establishments for use for official purposes by the inspector and NMFS representatives. The room or rooms designated for this purpose shall meet with the approval of NMFS and shall be conveniently located, properly ventilated, and provided with lockers or cabinets suitable for the protection and storage of inspection equipment and supplies and with facilities suitable for inspectors to change clothing.

(i) Adequate parking space, conveniently located, for private or official vehicles used in connection with providing inspection services shall be provided.

[36 FR 21040, Nov. 3, 1971]

## § 260.100 Facilities.

Each official establishment shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(a) Containers approved for use as containers for processed products shall not be used for any other purpose.

(b) No product or material not intended for human food or which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any fishery product is manufactured, processed, handled, or stored.

(c) Suitable facilities for cleaning and sanitizing equipment (e.g., brooms, brushes, mops, clean cloths, hose, nozzles, soaps, detergent, sprayers) shall be provided at convenient locations throughout the plant.

[36 FR 21040, Nov. 3, 1971]

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### § 260.101 Lavatory accommodations.

Modern lavatory accommodations, and properly located facilities for cleaning and sanitizing utensils and hands, shall be provided.

(a) Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water (135 °F. or more) and cold water, soap, and single service towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places as may be essential to the cleanliness of all personnel handling products.

(b) Sufficient containers with covers shall be provided for used towels and other wastes.

(c) An adequate number of hand washing facilities serving areas where edible products are prepared shall be operated by other than hand-operated controls, or shall be of a continuous flow type which provides an adequate flow of water for washing hands.

(d) Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash hands before returning to work.

(e) Toilet facilities shall be provided according to the following formula:

| Number of persons                              | Toilet bowls required |
|------------------------------------------------|-----------------------|
| 1 to 15, inclusive .....                       | 1                     |
| 16 to 35, inclusive .....                      | 2                     |
| 36 to 55, inclusive .....                      | 3                     |
| 56 to 80, inclusive .....                      | 4                     |
| For each additional 30 persons in excess of 80 | 1                     |

<sup>1</sup>Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls required.

All toilet equipment shall be kept operative, in good repair, and in a sanitary condition.

[36 FR 21041, Nov. 3, 1971]

### § 260.102 Equipment.

All equipment used for receiving, washing, segregating, picking, processing, packaging, or storing any processed products or any ingredients used in the manufacture or production thereof, shall be of such design, material, and construction as will:

(a) Enable the examination, segregation, preparation, packaging, and other processing operations applicable to

processed products, in an efficient, clean, and sanitary manner, and

(b) Permit easy access to all parts to insure thorough cleaning and effective bactericidal treatment. Insofar as is practicable, all such equipment shall be made of smooth impermeable corrosion-resistant material that will not adversely affect the processed product by chemical action or physical contact. Such equipment shall be kept in good repair and sanitary condition. Such equipment shall be cleaned and sanitized at a frequency as is necessary or required in accordance with Good Manufacturing Practice Regulations, 21 CFR part 128.

[36 FR 21041, Nov. 3, 1971]

**§ 260.103 Operations and operating procedures shall be in accordance with an effective sanitation program.**

(a) All operators in the receiving, transporting, holding, segregating, preparing, processing, packaging, and storing of processed products and ingredients, used as aforesaid, shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as possible and at temperatures that will inhibit and retard the growth of bacterial and other micro-organisms and prevent any deterioration or contamination of such processed products or ingredients thereof. Mechanical adjustments or practices which may cause contamination of foods by oil, dust, paint, scale, fumes, grinding materials, decomposed food, filth, chemicals, or other foreign materials shall not be conducted during any manufacturing or processing operation.

(b) All processed products, raw materials, ingredients, and components thereof shall be subject to inspection during each manufacturing or processing operation. To assure a safe, wholesome finished product, changes in processing methods and procedures as may be required by the Director shall be effectuated as soon as practicable. All processed products which are not manufactured or prepared in accordance with the requirements contained in § 260.96 to § 260.104 or are unwholesome or otherwise not fit for human food shall be removed and segregated

prior to any further processing operation.

(c) Official establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations.

(d) All ingredients used in the manufacture or processing of any processed product shall be wholesome and fit for human food.

(e) The methods and procedures employed in the receiving, segregating, handling, transporting, and processing of ingredients in official establishment(s) shall be adequate to result in a satisfactory processed product. Such methods and procedures include, but are not limited to, the following requirements:

(1) Containers, utensils, pans, and buckets used for the storage or transporting of partially processed food ingredients shall not be nested unless re-washed and sanitized before each use;

(2) Containers which are used for holding partially processed food ingredients shall not be stacked in such manner as to permit contamination of the partially processed food ingredients;

(3) Packages or containers for processed products shall be clean when being filled with such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) Retention tags: (1) Any equipment such as, but not limited to, conveyors, tillers, sorters, choppers, and containers which fail to meet appropriate and adequate sanitation requirements will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Following such identification, the equipment shall not be used until the discrepancy has been resolved, the equipment reinspected and approved by the inspector and the "RETAINED" identification removed by the inspector.

(2) Lot(s) of processed products that may be considered to be mislabeled and/or unwholesome by reason of contaminants or which may otherwise be in such condition as to require further evaluation or testing to determine that

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the product properly labeled and/or wholesome will be identified by the inspector in an appropriate and conspicuous manner with the word "RETAINED." Such lot(s) of product shall be held for reinspection or testing. Final disposition of the lot(s) shall be determined by NMFS and the removal of the "RETAINED" identification shall be performed by the inspector.

[36 FR 21041, Nov. 3, 1971]

### § 260.104 Personnel.

The establishment management shall be responsible for taking all precautions to assure the following:

(a) *Disease control.* No person affected by disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(b) *Cleanliness.* All persons, while working in direct contact with food preparation, food ingredients, or surfaces coming into contact therewith shall:

(1) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty, to the extent necessary to prevent contamination of food products.

(2) Wash and sanitize their hands thoroughly to prevent contamination by undesirable microorganisms before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.

(3) Remove all insecure jewelry and, when food is being manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

(4) If gloves are used in food handling, maintain them in an intact, clean, and sanitary condition. Such gloves shall be of an impermeable material except where their usage would be inappropriate or incompatible with the work involved.

(5) Wear hair nets, caps, masks, or other effective hair restraints. Other

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persons that may incidentally enter the processing areas shall comply with this requirement.

(6) Not store clothing or other personal belongings, eat food, drink beverages, chew gum, or use tobacco in any form in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils.

(7) Take any other necessary precautions to prevent contamination of foods with microorganisms or foreign substances including, but not limited to perspiration, hair, cosmetics, tobacco, chemicals, and medicants.

(c) *Education and training.* Personnel responsible for identifying sanitation failures or food contamination should have a background of education or experience, or a combination thereof, to provide a level of competency necessary for production of clean wholesome food. Food handlers and supervisors should receive appropriate training in proper food-handling techniques and food-protection principles and should be cognizant of the danger of poor personal hygiene and unsanitary practices, and other vectors of contamination.

[36 FR 21041, Nov. 3, 1971]

### LABELING REQUIREMENTS

#### §§ 260.200–260.201 [Reserved]

### PART 261—UNITED STATES STANDARDS FOR GRADES

Sec.

261.101 Standard description.

261.102 Publication and removal of U.S. Grade Standards.

261.103 Basis for determination of a U.S. Standard for Grades.

AUTHORITY: 7 U.S.C. 1621–1630.

SOURCE: 61 FR 9369, Mar. 8, 1996, unless otherwise noted.

#### § 261.101 Standard description.

A U.S. Standard for Grades authorized under this part is a standard for a fish or fishery product that has been developed and adopted by the voluntary seafood inspection program pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) and

other authorities delegated to the U.S. Department of Commerce.

**§ 261.102 Publication and removal of U.S. Grade Standards.**

(a) The voluntary U.S. Standards for Grades adopted pursuant to this part shall be issued as Program policies and contained within the NMFS Fishery Products Inspection Manual. Compliance with voluntary standards issued as Program policies within the manual shall satisfy the requirements of this part. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act; or other Federal laws and regulations.

(b) Notification of an application for a new grade standard shall be published in the FEDERAL REGISTER. If adopted, the grade standard shall be issued as a Program policy and contained in the NMFS Fishery Products Inspection Manual.

(c) Recision and revision of a U.S. Standard for Grades will be made as a Program policy amendment and contained in the NMFS Fishery Products Inspection Manual.

(d) The NMFS Fishery Products Inspection Manual is available to interested parties.

**§ 261.103 Basis for determination of a U.S. Standard for Grades.**

(a) To address the inherently distinct and dissimilar attributes found in the fishery product groups, each standard for grades should have a different scope and product description, product forms, sample sizes, definition of defects, etc. The Secretary will make the final determination regarding the content of a U.S. Standard for Grades.

(b) A proposal for a new or revised U.S. grade standard may include the following:

(1) *Scope and product description*, which describes the products that are eligible for grading using the standard (e.g., fish portion, fish fillet).

(2) *Product forms*, which describe the types, styles and market forms covered by the standard (e.g., skin-off, tail-on, headless).

(3) *Grade and inspection marks*, which describe the grades and inspection mark criteria for each grade category (e.g., Grade A ≤ 15 points).

(4) *Grade determination*, which describes the means by which the grade is determined (i.e., the factors rated by score points and those that are not). Standards may contain defect grouping limiting rules that contain additional provisions that must be met.

(5) *Sampling*, which describes the method of sampling and sample unit sizes (e.g., 10 portions, 8 ounces, etc.).

(6) *Procedures* that describe the process used to determine the product grade (e.g., label declarations, sensory evaluation).

(7) *Definitions of defects*, which outline the defects associated with the products covered by the standard, defines them, and describes the method of counting or measuring the defects. This section may provide associated defect points or reference a defect table (e.g., bruises, blood spots, bones, black spots, coating defects, 1-inch squares, percent by weight, ratios).

(8) *Defect point assessment*, which describes how to assess points and provides any special guidance that may be necessary to the particular standard (e.g., defect points for certain categories are added together and divided by the weight of the sample unit; the number of instances are counted to determine if it is slight, moderate, or excessive defect).

(9) *Tolerances for lot certification*, which provide the sections from Title 50 CFR that regulate lot certification.

(10) *Hygiene*, which specifies the sections of applicable Federal regulations regulating the safe, wholesome production of food for human consumption.

(11) *Methods of analysis*, which describe the methods of analysis that will be used in the evaluation of the products covered by the standard for grades (e.g., net weight, deglazing, debreading).

(12) *Defect table*, which is the table of defects and associated points to be assessed for each defect.

## SUBCHAPTER H—FISH AND SEAFOOD PROMOTION

### PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

- Sec.
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  - 270.3 Submission of application.
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  - 270.8 Nomination and appointment of Council members.
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  - 270.21 Petition of objection.
  - 270.22 Refunds.
  - 270.23 Dissolution of Councils.

AUTHORITY: 16 U.S.C. 4001–4017

SOURCE: 72 FR 18111, Apr. 11, 2007, unless otherwise noted.

#### § 270.1 Scope.

This part 270 describes matters pertaining to the establishment, representation, organization, practices, procedures, and termination of Seafood Marketing Councils.

#### § 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

*Act* means the Fish and Seafood Promotion Act of 1986 (Public Law 99–659) and any subsequent amendments.

*Consumer education* means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.

*Council* means a Seafood Marketing Council for one or more species of fish and fish products of that species established under section 210 of the Act (16 U.S.C. 4009).

*Expenditure* means monetary or material worth of fishery products. Expenditure is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier).

*Fiscal year* means any 12-month period as NMFS may determine for each Council.

*Fish* means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.

*Harvester* means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

*Importer* means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.

*Marketer* means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

*Marketing and promotion* means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.

*Member* means any person serving on any Council.

*Participant* means a member of a sector or business identified in an application for a Council charter as being subject to the referendum or assessment process.

*Person* means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing

under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

*Processor* means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

*Receiver* means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

*Research* means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

*Secretary* means the Secretary of Commerce, or the Secretary's designee.

*Sector* means

- (1) The sector consisting of harvesters;
- (2) The sector consisting of importers;
- (3) The sector consisting of marketers;
- (4) The sector consisting of processors;
- (5) The sector consisting of receivers; or
- (6) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

*Sector participant* means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

*Species* means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

*Value* means monetary or material worth of fishery products. Value is the difference between what a receiver is willing to pay for a product provided

by a harvester and its market price or an importer is willing to pay for a product from a foreign supplier and its market price. Value may be expressed in monetary units representing consumer surplus or producer surplus.

### § 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants as described in the proposed charter may file an application with NMFS for a charter for a Seafood Marketing Council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application package must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Applications should not be bound.

(b) The application consists of four parts:

- (1) A document requesting NMFS to establish a Council;
- (2) A proposed charter under which the proposed Council will operate;
- (3) A list of eligible referendum participants; and
- (4) Analytical documentation addressing requirements of applicable law.

(c) *Content of application*—(1) *Application or requesting document*. The application or requesting document submitted by the applicants to NMFS requesting that the Council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the application. The application must also include a statement that, if established, the Council will have sufficient resources (e.g., cash, donated office space, services, supplies,

### § 270.3

etc.) available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter.* A proposed charter must contain, at a minimum, the following information:

(i) The name of the Council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the Council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the Council will implement marketing and promotion plans under the Act. (The American Fisheries Society's "List of Common and Scientific Names of Fishes from the United States and Canada" (latest edition) or where available, an appropriate volume of its "List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada" (latest edition) should be used as the authority for all scientific and common names.);

(iv) A description of the geographic area (state(s)) within the United States covered by the Council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the Council. (The number of Council members should be manageable, while ensuring equitable geographic representation. The term for members will be 3 years. Initially, to ensure continuity, half of the members' terms will be 2 years and half will be 3 years. Reappointments are permissible.);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the Council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates as provided in § 270.18, based

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on a fixed amount per unit of weight or measure, or on a percentage of value of the product handled;

(ix) The proposed rate or rates that will be imposed by the Council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a Council on receivers or importers during the operation of the Council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds to sector participants subject to assessment who request the same in accordance with the time limits specified § 270.22;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the Council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on Council business and the procedures for selecting a chairperson of the Council;

(xvii) A provision that members of the Council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the Council;

(xviii) A provision containing a requirement for submission to NMFS the criteria and supporting data for evaluating the annual and/or multi-year performance of proposed marketing plans and the Council's performance;

(xix) A provision containing a requirement for submission of documentation as requested by NMFS for purposes of evaluating performance of proposed marketing plans and the Council's related performance;

(xx) Where adequate funds are not available, a provision containing the

minimum number of participants needed for sustained operations that cannot receive assessment refunds;

(xxi) A provision acknowledging that NMFS will have the right to participate in Council meetings;

(xxii) A provision that the Council will conduct its activities in accordance with applicable NMFS requirements and that NMFS has final approval authority over proposed marketing plans and Council actions;

(xxiii) A provision containing a requirement for the Council to arrange for a complete audit report to be conducted by an independent public accountant and submitted to NMFS at the end of each fiscal year;

(xxiv) A provision containing a requirement for the Council to conduct a market assessment based on economic, market, social and demographic, and biological information as deemed necessary by NMFS; and

(xxv) A provision containing a requirement for the Council to update the list of referendum participants on an annual basis.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter.

(i) The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the Council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the applicants in developing the list of sector participants.

(ii) [Reserved]

(4) *Analytical documentation.* The applicant must address the requirements of the Act, implementing regulations, and other applicable law, i.e., E.O. 12866, Regulatory Flexibility Act, National Environmental Policy Act, and other law as NMFS determines appropriate.

#### § 270.4 Review of application.

Within 180 days of receipt of the application to establish a Council, NMFS will:

(a) Determine if the application is complete and complies with all of the requirements set out in § 270.3 and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the Council. NMFS may require additional information from the applicants or proposed participants in order to verify eligibility. NMFS may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If NMFS finds minor deficiencies in an application that can be corrected within the 180-day review period, NMFS will advise the applicants in writing of what must be submitted by a specific date to correct the minor deficiencies.

(d) If NMFS makes a final negative determination, on an application, NMFS will advise the applicant in writing of the reason for the determination. The applicant may submit another application at any time thereafter. NMFS then has 180 days from receipt of the new application to render a final determination on its acceptability.

#### § 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under § 270.4, NMFS, within 90 days after the date of the last affirmative determination, will conduct a referendum on the adoption of the proposed charter.

(b) NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum.

(c) NMFS will initially pay all costs of a referendum to establish a Council. Within two years after establishment, the Council must reimburse NMFS for the total actual costs of the referendum from assessments collected by



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the Council. If a referendum fails to result in establishment of a Council, NMFS will immediately recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum.

(d) No less than 30 days prior to holding a referendum, NMFS will:

(1) Publish in the FEDERAL REGISTER the text of the proposed charter and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting.

### § 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such "participant" and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

### § 270.7 Results of referendum.

(a) *Favorable vote to establish a Council.* NMFS will, by order of publication in the FEDERAL REGISTER, establish the Council and approve an acceptable proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility require-

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ments to vote in the referendum as defined by the applicants.

(b) *Unfavorable vote to establish a Council.* If a referendum fails to pass in any sector of the proposed Council, NMFS will not establish the Council or approve the proposed charter. NMFS will immediately recover the cost of conducting the referendum according to § 270.5(c).

(c) *Notification of referendum results.* NMFS will notify the applicants of the results of the referendum and publish the results of the referendum in the FEDERAL REGISTER.

### § 270.8 Nomination and appointment of Council members.

(a) Within 30 days after a Council is established, NMFS will solicit nominations for Council members from the sectors represented on the Council in accordance with the approved charter. If the harvesters and receivers represented on the Council are engaged in business in two or more states, but within the geographic area of the Council, the nominations made under this section must, to the extent practicable, result in equitable representation for those states. Nominees must be knowledgeable and experienced with regard to the activities of, or have been actively engaged in the business of, the sector that such person will represent on the Council. Therefore, a resume will be required for each nominee.

(b) In accordance with 16 U.S.C. 4009(f), NMFS will, within 60 days after the end of the 30-day period, appoint the members of the Council from among the nominees.

### § 270.9 Terms, vacancies, and removal of Council members.

(a) A Council term is for 3 years, except for initial appointments to a newly established Council where:

(1) Half of the Council member terms will be 2 years; and

(2) Half of the Council member terms will be 3 years.

(b) A vacancy on a Council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the

term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(c) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the Council by NMFS if two-thirds of the members of the Council recommend action. All requests from a Council to NMFS for removal of a Council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

#### § 270.10 Responsibilities of a Council.

(a) Each Council will:

(1) Implement all terms of its approved charter;

(2) Prepare and submit to NMFS, for review and approval under § 270.11(a)(1), a marketing and promotion plan and amendments to the plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the Council;

(3) Implement and administer an approved marketing and promotion plan and amendments to the plan;

(4) Determine the assessment to be made under § 270.18 and administer the collection of such assessments to finance Council expenses described in paragraph (b) of this section;

(5) Receive, investigate and report to NMFS accounts of violations of rules or orders relating to assessments collected under § 270.20, or quality standard requirements established under § 270.15;

(6) Prepare and submit to NMFS, for review and approval a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the Council, including

(i) All administrative and contractual expenses;

(ii) The probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) The costs of the collection of assessments; and

(iv) The expense of repayment of the costs of each referendum conducted in regard to the Council.

(7) Comply with NMFS requirements, and prepare and submit to NMFS for review, evaluation, and verification of results and analysis an annual market assessment and related analytical documentation that is based on economic, market, social, demographic, and biological information as deemed necessary by NMFS;

(8) Maintain books and records, prepare and submit to NMFS reports in accordance with respect to the receipt and disbursement of funds entrusted to it, and submit to NMFS a completed audit report conducted by an independent auditor at the end of each fiscal year;

(9) Reimburse NMFS for the expenses incurred for the conduct of the referendum to establish the Council or any subsequent referendum to terminate the Council that fails;

(10) Prepare and submit to NMFS report or proposals as the Council determines appropriate to further the purposes of the Act.

(b) Funds collected by a Council under § 270.17 will be used by the Council for—

(1) Research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish projects;

(2) Other expenses, as described in § 270.10(a)(1);

(3) Such other expenses for the administration, maintenance, and functioning of the Council as may be authorized by NMFS; and

(4) Any reserve fund established under paragraph (e)(4) of this section and any administrative expenses incurred by NMFS specified as reimbursable under this Part.

(c) Marketing and promotion plans and amendments to such plans prepared by a Council under paragraph (a)(2) of this section will be designed to increase the general demand for fish and fish products described in accordance with § 270.3(c)(2)(iii) by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research,

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and other marketing and promotion activities.

(d) Consumer education and other marketing and promotion activities carried out by a Council under a marketing and promotion plan and amendments to a plan may not contain references to any private brand or trade name and will avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(e) *Authority of a Council.* A Council may:

(1) Sue and be sued;

(2) Enter into contracts;

(3) Employ and determine the salary of an executive director who may, with the approval of the Council employ and determine the salary of such additional staff as may be necessary;

(4) Establish a reserve fund from monies collected and received under § 270.17 to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(f) Amendment of a charter. A Council may submit to NMFS amendments to the text of the Council's charter. Any proposed amendments to a charter will be approved or disapproved in the same manner as the original charter was approved under § 270.4 and § 270.5 with the exception of § 270.4(b).

## § 270.11 Responsibilities of NMFS.

(a) In addition to the duties prescribed under 16 U.S.C. 4009, NMFS will:

(1) Participate in Council meetings and review, for consistency with the provisions of 50 CFR part 270 and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within 60 days after their submission by a Council;

(2) Immediately notify a Council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

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(3) Issue orders and amendments to such orders that are necessary to implement quality standards under § 270.15;

(4) Promulgate regulations necessary to carry out the purposes of this chapter;

(5) Enforce the provisions of the Act;

(6) Make all appointments to Councils in accordance with § 270.8 and the approved Council charter;

(7) Approve the criteria and time frames under which a Council's performance will be evaluated; and

(8) Implement the provisions of 16 U.S.C. 4001 *et seq.* in accordance with the available financial and management resources NMFS determines can be utilized.

(b) NMFS may provide, on a reimbursable or other basis, such administrative or technical assistance as a Council may request for purposes of the initial organization and subsequent operation of the Council. However, a Council is responsible for the cost of preparing and submitting information (e.g., reports, evaluation data, etc.) requested by NMFS.

## § 270.12 Notice of Council meetings.

The Council will give NMFS the same notice of its meetings as it gives to its members. NMFS will have the right to participate in all Council meetings.

## § 270.13 Books, records and reports.

(a) The Council must submit to NMFS the following documents according to the schedule approved in the Council's charter:

(1) A marketing assessment and promotion plan;

(2) A financial report with respect to the receipt and disbursement of funds;

(3) An audit report conducted by an independent public accountant; and

(4) Other reports or data NMFS determines necessary to evaluate the Council's performance and verify the results of the market assessment and promotion plan..

(b) All Council records, reports, and data must be maintained by the Council for a minimum of 3 years, even if the Council is terminated.

**§ 270.14 Update of sector participant data.**

The Council will submit to NMFS at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

**§ 270.15 Quality standards.**

(a) Each Council may develop and submit to NMFS for approval or, upon the request of a Council, NMFS will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a Council by a majority of its members following a referendum conducted by the Council among sector participants of the concerned sector(s). In order for a quality standard to be brought before Council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12-month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The Council must submit a plan to conduct the referendum on the quality standards to NMFS for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

- (1) Date(s) for conducting the referendum;
- (2) Method (by mail or in person);
- (3) Copy of the proposed notification to sector participants informing them of the referendum;
- (4) List of sector participants eligible to vote;
- (5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by NMFS will be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps NMFS deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) or other recognized Federal standards and/or specifications for fish and fish products.

(g) No quality standard adopted by a Council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the Council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade, or under other international standards deemed acceptable by NMFS.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subchapter also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the Council must develop and file with NMFS an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is

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affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product. The use of such identifier is governed by § 270.15.

## § 270.16 Deposit of funds.

All funds collected or received by a Council under this section must be deposited in an appropriate account in the name of the Council specified in its charter. Funds eligible to be collected or received by a Council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The Council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) *Risk-free.* All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than \$100,000 to assure both principal and interest are federally insured in full.

(2) *Short-term.* Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) *Collateralization.* Investments exceeding the \$100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve Bank. Otherwise,

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another depository must hold the collateral.

## § 270.17 Authority to impose assessments.

A Council will impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the Council in carrying out its functions under 50 CFR part 270.

## § 270.18 Method of imposing assessments.

Assessments will be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved Council charter. Assessment rates will be based on value that may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector will be in the form of a percentage of the value or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter will be in the form of a percentage of the value or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector will be in the form of a percentage of the value that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(d) A Council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the Council by reason of failure to meet the requirements specified under unless that person, after the date on which the referendum is held, meets the requirements of section.

(e) Any person may make voluntary payments or in-kind contributions to a Council for purposes of assisting the Council in carrying out its functions.

#### § 270.19 Notice of assessment.

(a) The Council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The period of time covered by the assessment;

(4) The date the assessment is due and payable, which will not be earlier than 30 days from the date of the notice;

(5) The form(s) of payment; and

(6) To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with NMFS at any time during the time period to which the assessment applies, including the right to request a hearing on the petition. The notice must state that the petition of objection must be filed in accordance with the procedures in § 270.21.

(c) The notice must also advise such persons of his or her right to a refund of the assessment as provided in § 270.22. The notice must state that a refund may be requested for not less than 90 days from such collection, and provide that the Council will make the refund within 60 days after the request for the refund is requested.

#### § 270.20 Payment of assessments.

Persons subject to an assessment would be required to pay the assessment on or before the date due, unless they have demanded a refund or filed a petition of objection with NMFS under § 270.21. However, persons who have demanded a refund under § 270.22 or filed a petition of objection under § 270.21 may submit proof of these actions in lieu of payment. In the case of a petition of objection, NMFS will inform the Council and the petitioner of its find-

ing at which time petitioner must pay the revised assessment if applicable.

#### § 270.21 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under § 270.19 may request that NMFS modify or take other appropriate action regarding the assessment or promotion plan by filing a written petition of objection with NMFS. Petitions of objection may be filed:

(1) Only if the petitioner determines one or more of the following criteria is not in accordance with the law:

(i) The assessment;

(ii) The plan upon which the assessment is based; or

(iii) Any obligation imposed on the petitioner under the plan.

(2) Only during the time period to which the assessment applies.

(b) *Contents of the petition of objection.* A petition must be addressed to Assistant Administrator for Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition of objection is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to Council.* NMFS will promptly furnish the appropriate Council with a copy of the petition of objection.

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### (d) *Opportunity for informal hearing.*

(1) Any person filing a petition of objection may request an informal hearing on the petition. The hearing request must be submitted with the petition of objection.

(2) If a request for hearing is timely filed, or if NMFS determines that a hearing is advisable, NMFS will so notify the petitioner and the Council. NMFS will establish the applicable procedures, and designate who will be responsible for conducting a hearing. The petitioner, the Council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. NMFS may consolidate two or more hearing requests into a single proceeding.

(3) *Final decision.* Following the hearing, or if no hearing is held, as soon as practicable, NMFS will decide the matter and serve written notice of the decision on the petitioner and the Council. NMFS's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency. NMFS will have the discretion to waive collection of a contested assessment or revise, modify, or alter the assessment amount based on a Council method of assessment.

## § 270.22 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the Council a refund of such assessment. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the Council and approved by NMFS. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the Council, that sector participant may

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no longer participate in a referendum or other business of the Council during the remainder of the assessment rate period. Future assessments will only be sent to such a sector participant at the request of the sector participant. If assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the Council.

## § 270.23 Dissolution of Councils.

(a) *Petition for termination.* (1) A petition to terminate a Council may be filed with NMFS by no less than three sector participants in any one sector. Any petition filed under this subsection must be accompanied by a written document explaining the reasons for such petition.

(2) If NMFS determines that a petition filed under paragraph (a)(1) of this section is accompanied by the signatures, or corporate certifications, of no less than three sector participants in the sector referred to in paragraph (a)(1) of this section who collectively accounted for, in the 12-month period immediately preceding the month in which the petition was filed, not less than 20 percent of the value of the fish or fish products described in § 270.3(c)(2)(iii) that were handled by that sector during the period, NMFS within 90 days after the determination, will conduct a referendum for termination of the Council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum, NMFS will publish an announcement in the FEDERAL REGISTER of the referendum, including an explanation of the reasons for the petition for termination filed under paragraph (a)(1) of this section and any other relevant information NMFS considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the Council constitute a majority of the sector participants voting and the majority, in the period in paragraph (a)(2) of this section, collectively accounted for not less than 66 percent of the value of such fish and fish products that were handled during such period by the sector in paragraph (a)(1) of this section,

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NMFS will by order of publication terminate the Council effective as of a date by which the affairs of the Council may be concluded on an orderly basis.

(5) NMFS initially will pay all costs of a referendum conducted in §270.23. Prior to conducting such a referendum, NMFS will require petitioners to post a bond or other security acceptable to NMFS in an amount which NMFS determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

(6) If a referendum conducted under §270.23 fails to result in the termination of the Council, NMFS will immediately recover the amount of the bond posted by the petitioners under §270.23(a)(5).

(7) If a referendum conducted under this subsection results in the termination of the Council, NMFS will recover the expenses incurred for the

conduct of the referendum from the account established by the Council. If the amount remaining in such account is insufficient for NMFS to recover all expenses incurred for the conduct of the referendum, NMFS will recover the balance of the expenses from the petitioners that posted a bond under paragraph (a)(5) of this section.

(b) *Payment of remaining funds.* If a Council is terminated under section §270.23(a)(4), NMFS, after recovering all expenses incurred for the conduct of the referendum under paragraph (a) of this section, will take such action as is necessary and practicable to ensure that moneys remaining in the account established by the Council under §270.17 are paid on a prorated basis to the sector participants from whom those moneys were collected under §270.20.

**SUBCHAPTER I–J [RESERVED]**



## SUBCHAPTER K—CONTINENTAL SHELF

### PART 296—FISHERMEN'S CONTINGENCY FUND

- Sec.  
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296.2 Definitions.  
296.3 Fishermen's contingency fund.  
296.4 Claims eligible for compensation.  
296.5 Instructions for filing claims.  
296.6 NMFS processing of claims.  
296.7 Burden of proof and presumption of causation.  
296.8 Amount of award.  
296.9 Initial determination.  
296.10 Agency review.  
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296.12 Payment of costs.  
296.13 Payment of award for claim.  
296.14 Subrogation.  
296.15 Judicial review.

AUTHORITY: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

#### § 296.1 Purpose.

These regulations implement title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

#### § 296.2 Definitions.

*Area affected by Outer Continental Shelf activities* means the area within a 3-mile radius of any casualty site which:

- (1) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or
- (2) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

*Chief, FSD* means Chief, Financial Services Division, National Marine

Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

*Citizen of the United States* means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

*Commercial fisherman* means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

*Commercial fishing vessel* means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

*Easement* means a right of use or easement granted under 30 CFR 250.18.

*Fish* means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

*Fishing gear* means any commercial fishing vessel, and any equipment of such vessel.

*Fund* means the Fishermen's Contingency Fund established by title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

*Holder* means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

*Lease* means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

*Negligence or fault* includes, but is not limited to, failure to:

- (1) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;
- (2) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(3) Abide by established rules of the road;

(4) Use proper care; or

(5) Use due care and diligence to mitigate the damage or loss.

*Outer Continental Shelf* means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

*Person* means an individual, partnership, corporation, association, public or private organization, government, or other entity.

*Resulting Economic Loss* means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

*Right-of-way* means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0-5.

*Secretary* means the Secretary of Commerce or his designee.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6322, Feb. 20, 1996]

### § 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assess-

ments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of \$5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

### § 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss

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may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Exceptions.* Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985; 61 FR 6322, Feb. 20, 1996]

### § 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation*—(1) *General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is

made in person. The fifteen-day report must be made to the Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

(3) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file and when and where to file claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the

crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or

lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units deployed on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985; 53 FR 24645, June 29, 1988; 61 FR 6322, Feb. 20, 1996]

#### § 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim,

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the Interior Department will immediately:

(1) Plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities;

(2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the

power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a \$10,000 fine and 5 years' imprisonment, or both.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6322, Feb. 20, 1996]

### § 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the

damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

#### § 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained \$10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive \$6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive \$100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

#### § 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

#### § 296.10 Agency review.

(a) Within 30 days after the Chief, FSD, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

#### § 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

#### § 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to

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respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

#### § 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, Financial Services Division, shall immediately disburse the claim awarded if the claimant signed as part of his/her application a statement agreeing to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) [Reserved]

[61 FR 6322, Feb. 20, 1996]

#### § 296.14 Subrogation.

(a) The claim application will contain a subrogation statement signed by

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the claimant as a condition of payment of the claim which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6323, Feb. 20, 1996]

#### § 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.

CHAPTER III—INTERNATIONAL FISHING AND  
RELATED ACTIVITIES

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AUTHORITY: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

SOURCE: 61 FR 35550, July 5, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 300 appear at 64 FR 44431, Aug. 16, 1999, and at 76 FR 59305, Sept. 26, 2011.

### Subpart A—General

AUTHORITY: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

#### § 300.1 Purpose and scope.

The purpose of this part is to implement the fishery conservation and management measures provided for in the international treaties, conventions, or agreements specified in each subpart, as well as certain provisions of the Lacey Act Amendments of 1981. The regulations in this part apply, except where otherwise specified in this part, to all persons and all places subject to the jurisdiction of the United States under the acts implemented under each subpart.

#### § 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through K of this part, the terms used in this part have the following meanings:

*Assistant Administrator* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee. Address: Room 14555, 1315 East-West Highway, Silver Spring, MD 20910.

*Authorized officer* means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

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

(3) Any person designated by the head of any Federal or state agency

that has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of any statute administered by the Secretary.

*CCAMLR inspector* means a person designated by a member of the Commission for the Conservation of Antarctic Marine Living Resources as an inspector under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources to verify compliance with measures in effect under the Convention.

*Exclusive Economic Zone* or *EEZ* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

*Fishing* or *to fish* means:

(1) The catching or taking of fish;

(2) The attempted catching or taking of fish;

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

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

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

*IATTC* means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction, constitutes an importation within the meaning of the customs laws of the United States.

*IRCS* means International Radio Call Sign.

*Magnuson-Stevens Act* means the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

*National of the United States* or *U.S. national* means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the

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United States. In the case of a corporation, partnership or other non- natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

*NMFS* means the National Marine Fisheries Service, NOAA, Department of Commerce.

*NMFS Headquarters* means NMFS, 1315 East-West Highway, Silver Spring, MD 20910. *Attention:* Office of International Affairs.

*Official number* means the documentation number issued by the USCG or the certificate number issued by a state or the USCG for an undocumented vessel, or any equivalent number if the vessel is registered in a foreign nation.

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

*Owner* means, with respect to any vessel:

(1) Any person who owns that vessel in whole or part (whether or not the vessel is leased or chartered);

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

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

(4) Any agent designated as such by a person described in this definition.

*Person* means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

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

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

*Secretary* means the Secretary of Commerce or a designee.

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*USCG* means the United States Coast Guard.

*Yellowfin tuna* means any fish of the species *Thunnus albacares* (synonymy: *Neothunnus macropterus*).

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

### § 300.3 Relation to other laws.

Other laws that may apply to fishing activities addressed herein are set forth in § 600.705 of chapter VI of this title.

### § 300.4 General prohibitions.

It is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate the conditions or restrictions of a permit issued under this part.

(b) Fail to submit information, fail to submit information in a timely manner, or submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to this part.

(c) Make any false statement, oral or written, to an authorized officer concerning the catching, taking, harvesting, possession, landing, purchase, sale, or transfer of fish, or concerning any other matter subject to investigation by that officer under this part.

(d) Conceal any material fact (including by omission), concerning any matter subject to investigation by an authorized officer under this part.

(e) Refuse to allow an authorized officer to inspect any report or record required to be made or kept under this part.

(f) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(g) Fail to comply immediately with any of the enforcement and boarding procedures specified in this part.

(h) Refuse to allow an authorized officer to board a fishing vessel, or enter any other area of custody (i.e., any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might

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be found) subject to such person's control, for the purpose of conducting any inspection, search, seizure, investigation, or arrest in connection with the enforcement of this part or any other applicable law.

(i) Destroy, stave, or dispose of in any manner, any fish, gear, cargo, or other matter, upon any communication or signal from an authorized officer of the United States, or upon the approach of such an officer, enforcement vessel, or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(j) Intentionally destroy evidence that could be used to determine if a violation of this part has occurred.

(k) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer in the conduct of any boarding, inspection, search, seizure, investigation, or arrest in connection with enforcement of this part.

(l) Resist a lawful arrest or detention for any act prohibited by this part.

(m) Interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this part.

(n) Interfere with, obstruct, delay, or prevent, by any means, an investigation, search, seizure, or disposition of seized property in connection with enforcement of this part.

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this part.

(p) Violate any provision of any statute implemented by this part.

(q) Attempt to do any of the foregoing.

### § 300.5 Facilitation of enforcement.

(a) *Compliance.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer or CCAMLR inspector to stop the vessel, and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record

(where applicable), and catch for purposes of enforcing this part.

(1) For the purposes of this section "freeboard" means the working distance between the top rail of the gunwale of a vessel and the water's surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water's surface.

(2) For the purposes of this section, "pilot ladder" means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

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

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

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal "L" which, in the International Code of Signals, means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer or CCAMLR inspector, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer or CCAMLR inspector to board.

(5) A person aboard a vessel who does not understand a signal from an enforcement unit and who is unable to

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the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear that may be in the water.

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

[61 FR 35550, July 5, 1996, as amended at 73 FR 67809, Nov. 17, 2008]

## Subpart B—High Seas Fisheries

AUTHORITY: 16 U.S.C. 5501 *et seq.*

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas.

**§ 300.11 Definitions.**

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in §300.2, the Act, or the Agreement, the definition in this section shall apply.

*High seas* means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

*High seas fishing vessel* means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation.

*International conservation and management measures* means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations

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Convention on the Law of the Sea, and that are recognized by the United States.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

### § 300.12 Issuing offices.

Any Regional Administrator may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Administrator, applicants are encouraged to submit their applications (with envelopes marked "Attn: HSFCA Permits") to the Regional Administrator with whom they normally interact on fisheries matters.

### § 300.13 Vessel permits.

(a) *Eligibility.* (1) Any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures has no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if it is determined by the Regional Administrator that issuing a permit would not subvert the purposes of the Agreement.

(b) *Application forms.* The owner or operator of a high seas fishing vessel may apply for a permit under this subpart by completing an application form. Applicants may obtain an application form from a Regional Administrator.

(c) *Application information.* An applicant must submit a complete and accurate permit application, signed by the owner or operator, to the appropriate Regional Administrator.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from a Regional Administrator, for determining administrative costs of each special product or service. The fee is specified with the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit, which will include appropriate conditions or restrictions, within 30 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Administrator will notify the applicant of any deficiency in the application.

(f) *Validity.* Permits issued under this subpart are valid for 5 years from the date of issuance. Renewal of a permit prior to its expiration is the responsibility of the permit holder. For a permit to remain valid to its expiration date, the vessel's USCG documentation or state registration must be kept current. A permit issued under this subpart is void when the name of the owner or vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(g) *Change in application information.* Any changes in vessel documentation



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status or other permit application information must be reported to the Regional Administrator in writing within 15 days of such changes.

(h) *Transfer*. A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display*. A valid permit, or a copy thereof, issued under this subpart must be on board the vessel while operating on the high seas and available for inspection by an authorized officer. Faxed copies of permits are acceptable.

[61 FR 35550, July 5, 1996, as amended at 64 FR 15, Jan. 4, 1999]

### § 300.14 Vessel identification.

(a) *General*. A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking*. Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its IRCS if it has been assigned an IRCS. If an IRCS has not been assigned to the vessel, it must be marked (in order of priority) with its Federal, State, or other documentation number appearing on its high seas fishing permit and if a WCPFC Area Endorsement has been issued for the vessel under § 300.212, that documentation number must be preceded by the characters “USA” and a hyphen (that is, “USA-”).

(ii) The markings must be displayed at all times on the vessel’s side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels 25 meters (m) and over in length, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be  $h/6$ ;

(ix) The space between letters and/or numbers must not exceed  $h/4$  nor be less than  $h/6$ ;

(x) The space between adjacent letters having sloping sides must not exceed  $h/8$  nor be less than  $h/10$ ;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than  $h/6$ ; and

(xiii) The marks and the background must be maintained in good condition at all times.

[64 FR 15, Jan. 4, 1999, as amended at 75 FR 3347, Jan. 21, 2010]

### § 300.15 Prohibitions.

In addition to the prohibitions in section 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 300.13.

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(c) Use a high seas fishing vessel on the high seas that is not marked in accordance with § 300.14.

[61 FR 35550, July 5, 1996, as amended at 64 FR 15, Jan. 4, 1999]

### § 300.16 Penalties.

(a) Any person, any high seas fishing vessel, the owner or operator of such vessel, or any person who has been issued or has applied for a permit, found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.

(b) Permits under this subpart may be subject to permit sanctions prescribed by the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws if any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue.

[64 FR 15, Jan. 4, 1999]

### § 300.17 Reporting.

(a) *General.* The operator of any vessel permitted under this subpart must report high seas catch and effort information to NMFS in a manner set by this section. Reports must include: identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles or birds.

(b) *Reporting options.* (1) For the following fisheries, a permit holder must maintain and submit the listed reporting forms to the appropriate address and in accordance with the time limits required by the relevant regulations:

(i) Antarctic—CCAMLR Logbook (50 CFR 300.107);

(ii) Atlantic—Fishing Vessel Log Reports (50 CFR 648.7(b));

(iii) Atlantic Pelagic Longline—Longline Logbook (50 CFR 630.5);

(iv) Atlantic Purse Seine—Vessel Logbook (50 CFR 635.5);

(v) Pacific Pelagic Longline Longline Logbook (§ 665.14(a) of this title);

(vi) Eastern Pacific Purse Seine—IATTC Logbook (50 CFR 300.22); or

(vii) Western Pacific Purse Seine—South Pacific Tuna Treaty Logbook (50 CFR 300.34).

(2) For the albacore troll fisheries in the North and South Pacific, a permit holder must report high seas catch and effort by maintaining and submitting the log provided by the Regional Administrator, Southwest Region, NMFS.

(3) For other fisheries, a permit holder must report high seas catch and effort by maintaining and submitting records, specific to the fishing gear being used, on forms provided by the Regional Administrator of the NMFS Region which issued the permit holder's HSFCA permit.

(c) *Confidentiality of statistics.* Information submitted pursuant to this subpart will be treated in accordance with the provisions of 50 CFR part 600 of this title.

[64 FR 15, Jan. 4, 1999, as amended at 67 FR 64312, Oct. 18, 2002; 74 FR 65479, Dec. 10, 2009]

## Subpart C—Eastern Pacific Tuna Fisheries

AUTHORITY: 16 U.S.C. 951–961 *et seq.*

### § 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act). The regulations implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States.

[69 FR 67277, Nov. 17, 2004]

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### § 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, in the Act, or in the Convention, the definition in this section shall apply.

*Bigeye tuna* means the species *Thunnus obesus*.

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

*Convention Area* means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

*Data buoy* means, for the purpose of § 300.25, a floating device, either drifting or anchored, which is deployed by one or more governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities, and which has been reported to the IATTC by a Member or Cooperating non-Member of the Commission.

*Fish aggregating device (FAD)* means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

*Fishing trip* means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

*Fishing vessel* means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

*Floating object* means any natural object or FAD among which fishing vessels may catch tuna.

*Incidental catch* or *incidental species* means species caught while fishing with the primary purpose of catching a different species. An incidental catch is

expressed as a percentage of the weight of the total fish on board.

*Land* or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

*Longline gear* means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

*Observer* means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

*Regional Administrator* means the Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

*Regional Vessel Register* (hereafter referred to as *Vessel Register*) means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

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

*Tender vessel* means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

*Transship* means to unload fish from a vessel that caught fish to another vessel.

*Transshipment receiving vessel* means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

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

[61 FR 35550, July 5, 1996, as amended at 64 FR 29133, May 28, 1999; 64 FR 44430, Aug. 16, 1999; 69 FR 67277, Nov. 17, 2004; 70 FR 19010, Apr. 12, 2005; 74 FR 1618, Jan. 13, 2009; 74 FR 61050, Nov. 23, 2009; 76 FR 287, Jan. 4, 2011; 76 FR 68337, Nov. 4, 2011]

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### § 300.22 Eastern Pacific fisheries recordkeeping and written reports.

(a) The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel. For vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels, maintaining and submitting any logbook required by existing state or federal regulation shall be sufficient to comply with this paragraph.

(b) *Vessel Register.* The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (b)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to fish for tuna and tuna-like species in the Convention Area.

(1) *Exception.* Once per year, a vessel that is licensed under the South Pacific Tuna Treaty may exercise an option to fish with purse seine gear to target tuna in the Convention Area without being listed on the Vessel Register, for a fishing trip that does not exceed 90 days in duration. No more than 32 of such trips are allowed each calendar year. After the commencement of the 32nd such trip, the Regional Administrator shall announce, in the FEDERAL REGISTER and by other appropriate means, that no more such

trips are allowed for the remainder of the calendar year. Under § 216.24(b)(6)(iii)(C) of this title, vessel assessment fees must be paid for vessels exercising this option.

(2) *Requirements for inclusion of purse seine vessels on the vessel register.* The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) *Vessel information.* Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons and cubic meters; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(4) *Purse seine vessel register status.* For a purse seine vessel to be listed on the Vessel Register and to be categorized as either "active" or "inactive" in the following calendar year, the vessel owner or managing owner

must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under §216.24(b) of this title and under paragraphs (b)(4)(i) and (b)(4)(iii) of this section.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner's signature and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the Regional Administrator. Vessel permit applications and written notifications must be submitted by fax to (562) 980-4047. The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to

be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all purse seine vessels categorized as active on the Vessel Register may not exceed 31,775 cubic meters in a given year;

(B) A purse seine vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under §216.24(b)(2) of this title;

(C) Requests for active status will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year;

(3) Requests for vessels not described in paragraphs (b)(4)(i)(C)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in §216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.*

(A) Except as described under paragraph (b)(4)(ii)(B) of this section, requests for active status under paragraph (b)(4)(i) of this section will be considered frivolous if, for a vessel categorized as active in a given calendar year:

(1) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(2) The vessel did not fish for tuna at all in the Convention Area in that same year.

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(B) *Exceptions.* Requests described under paragraph (b)(4)(ii)(A) of this section will not be considered frivolous requests if:

(1) The vessel's catch pattern fell within the criteria described in paragraph (b)(4)(ii)(A) as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator; or

(2) The vessel's carrying capacity is 400 st (362.8 mt) or less and landings of tuna caught by the vessel in the Convention Area comprise 50 percent or less of the vessel's total landings, by weight, for a given calendar year.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit by mail to the Regional Administrator a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive. At any time during the year, a vessel owner or managing owner may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the cal-

endar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator written notification as described in this paragraph (payment of the vessel assessment fee is not required).

(5) *Removal from the vessel register.* A vessel may be removed from the Vessel Register by the Regional Administrator:

- (i) If the vessel has sunk;
- (ii) Upon written request by the vessel's owner or managing owner;
- (iii) Following a final agency action on a permit sanction for a violation;
- (iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation;
- (v) If the U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

(A) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or

(B) The documentation for the vessel will be or has been deleted for any reason.

(vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;

(vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or

(viii) For tuna purse seine vessels, if the request for active status on the Vessel Register has been determined to be a frivolous request.

(6) *Process for Removal from the Vessel Register.* When a vessel is removed from the Vessel Register under paragraph (b)(5) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal

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and the reasons therefor. For a removal from the Vessel Register under § 300.22(b)(5)(iii), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register under § 300.22(b)(5)(iv), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

*(7) Procedures for replacing purse seine vessels removed from the Vessel Register.*

(i) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel pays the vessel assessment fee associated with inactive status. A purse seine vessel of 400 st (362.8 mt) carrying capacity or less that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel submits written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 31,775 cubic meters and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) After a purse seine vessel categorized as active is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included

on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator written notification as described in paragraph (b)(4)(i) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee within 10 business days after submission of the faxed written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee and permit application fee within 10 business days after submission of the faxed vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

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(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted by mail and received by the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

[61 FR 35550, July 5, 1996, as amended at 66 FR 49320, Sept. 27, 2001; 70 FR 19010, Apr. 12, 2005; 74 FR 1618, Jan. 13, 2009; 76 FR 287, Jan. 4, 2011; 76 FR 68337, Nov. 4, 2011]

### § 300.23 Eastern Pacific fisheries – Persons and vessels exempted.

This subpart does not apply to:

(a) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

[61 FR 35550, July 5, 1996, as amended at 74 FR 1620, Jan. 13, 2009]

### § 300.24 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator's notification of closure issued under § 300.25.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area as required under § 300.25(e)(1).

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified on board the vessel during the brailing operation.

(g) Land any non-tuna fish species taken in a purse seine set in the Convention Area.

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.25(e).

(i) Fail to report information when requested by the Regional Administrator under § 300.22.

(j) Fail to provide written notification as described under § 300.22(b)(8) to the Regional Administrator at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

(k) Use a fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.25(b)(4)(i) or (ii).

(l) Use a fishing vessel over 24 meters in length to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.25(b)(4)(iii).

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(7).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1), (f)(2), (f)(5), or (6).

(o) Use a U.S. longline or purse seine fishing vessel used to fish for HMS within one nautical mile of an anchored data buoy while the fishing vessel is in the Convention Area in contravention of § 300.25(g)(1).



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(p) Use a U.S. fishing vessel used for fishing for HMS, or any gear, equipment, or watercraft deployed by such a fishing vessel, to interact with a data buoy in the Convention Area in contravention of § 300.25(g)(2).

(q) Remove from the water a data buoy and place it on board or tow a data buoy with a U.S. fishing vessel used for fishing for HMS while the vessel is in the Convention Area without authorization by the owner of the data buoy or the owner's authorized representative in contravention of § 300.25(g)(3).

(r) In the event of an entanglement of a data buoy with a U.S. fishing vessel, or its fishing gear, equipment, or associated watercraft, used for fishing for HMS in the Convention Area, fail to promptly remove the data buoy with as little damage to the data buoy and its mooring and anchor lines as possible, in contravention of § 300.25(g)(4).

(s) Fail to take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys in contravention of § 300.25(g)(5).

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain onboard, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.25(e)(4).

[61 FR 35550, July 5, 1996, as amended at 64 FR 29133, May 28, 1999; 64 FR 44430, Aug. 16, 1999; 66 FR 49320, Sept. 27, 2001. Redesignated and amended at 69 FR 67277, Nov. 17, 2004; 74 FR 1620, Jan. 13, 2009; 74 FR 61051, Nov. 23, 2009; 76 FR 68337, Nov. 4, 2011; 76 FR 68337, Nov. 4, 2011]

### § 300.25 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations and resolutions.* Fishery management resolutions made by the IATTC and approved by the Department of State will be promulgated in the FEDERAL REGISTER via appropriate rule-making. The publication in the FEDERAL REGISTER will summarize the fishery management resolutions and respond to any public comments received by NMFS.

(b) *Tuna quotas in the longline fishery in the Convention Area.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2011, 2012, and 2013, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in overall length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the FEDERAL REGISTER announcing that the limit has been reached and that the restrictions described in paragraph (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in overall length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the

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effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in overall length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in overall length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in overall length—other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting—is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(c) *Use of tender vessels.* No person subject to these regulations may use a tender vessel in the Convention Area.

(d) *Transshipments at sea.* No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

(e) *Bycatch reduction measures.* (1) As of January 1, 2012, bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity)

using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

(2) All purse seine vessels must release all sharks, billfishes, rays, mahimahi (*dorado*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(3) All purse seine vessels must apply special sea turtle handling and release procedures, as follows:

(i) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the turtle;

(ii) If a turtle is entangled in the net, net roll shall stop as soon as the turtle comes out of the water and shall not resume until the turtle has been disentangled and released;

(iii) If, in spite of the measures taken under paragraphs (e)(3)(i) and (ii) of this section, a turtle is accidentally brought onboard the vessel alive and active, the vessel's engine shall be disengaged and the turtle shall be released as quickly as practicable;

(iv) If a turtle brought on board under paragraph (e)(3)(iii) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

(4) The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(f) *Purse seine closures in the Convention Area.* (1) A fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for

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62 days in each of the years 2011, 2012, and 2013 during one of the following two periods:

(i) From 0000 hours on July 29 to 2400 hours on September 18, or

(ii) From 0000 hours on November 18 to 2400 hours on January 18 of the following year.

(2) For 2011, all U.S. purse seine vessels subject to the requirements under paragraph (f)(1) of this section shall adhere to the closure period under paragraph (f)(1)(ii) of this section.

(3) A vessel owner of a vessel that is subject to the requirements under paragraph (f)(1) of this section must in 2012 and 2013 provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (f)(1) of this section to which his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980-4047 or mail (see §300.21 of this chapter) and must be received no later than July 1 in each of the years 2012 and 2013. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) If written notification is not submitted per paragraph (f)(3) of this section for a vessel subject to the requirements under paragraph (f)(1) of this section, that vessel must adhere to the closure period under paragraph (f)(1)(ii) of this section.

(5) A vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(6) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2012 and 2013 to fish with purse seine gear within the area bounded at the east and west by 96° and 110°W. longitude and bounded at the north and south by 4°N. and 3°S. latitude.

(7) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(6) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

(g) *Restrictions on fishing in proximity to data buoys.* (1) A longline or purse seine fishing vessel of the United States may not be used to fish for HMS within one nautical mile of an anchored data buoy in the Convention Area. The one-nautical-mile distance shall be measured from the data buoy to the nearest portion of the fishing vessel or items associated with the fishing vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. This prohibition shall not apply if and when the fishing vessel is operated as part of a scientific research program that has received specific authorization by the IATTC or is conducting work on behalf of the IATTC.

(2) A fishing vessel of the United States used to fish for HMS, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, may not be used to interact with a data buoy while the fishing vessel is in the Convention Area. Interact with a data buoy means to engage in conduct that could impair the functioning of a data buoy through actions that include but that are not limited to the following: encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the fishing vessel, including equipment such as watercraft, to a data buoy or its mooring; or cutting a data buoy anchor line.

(3) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS may not remove a data buoy or any parts thereof from the water and place it on board the fishing vessel or tow a data buoy when in the Convention Area unless authorized to do so by the owner of the data buoy or

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an authorized representative or agent of the owner. When practicable, advance written authorization must be available onboard a U.S. fishing vessel that has taken on board or tows a data buoy. In all other cases, a written document (*e.g.*, fax, email) verifying the authorization must be obtained by the vessel owner or operator within 15 days of landing.

(4) In the event that a fishing vessel of the United States that is used to fish for HMS or any of its fishing gear, equipment, or associated watercraft, becomes entangled with a data buoy while the fishing vessel is in the Convention Area, the owner and operator of the fishing vessel must promptly remove the entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage to the data buoy and its mooring and anchor lines as possible.

(5) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS must take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys.

[64 FR 44431, Aug. 16, 1999, as amended at 66 FR 49320, Sept. 27, 2001. Redesignated at 69 FR 67277, Nov. 17, 2004; 74 FR 1620, Jan. 13, 2009; 74 FR 61051, Nov. 23, 2009; 76 FR 68338, Nov. 4, 2011; 76 FR 68338, Nov. 4, 2011]

## Subpart D—South Pacific Tuna Fisheries

AUTHORITY: 16 U.S.C. 973–973r.

### § 300.30 Purpose and scope.

This subpart implements the South Pacific Tuna Act of 1988 (Act) and the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and applies to persons and vessels subject to the jurisdiction of the United States.

### § 300.31 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Treaty, and unless the context requires otherwise, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

*Administrator* means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States.

*Applicable national law* means any of the laws of Pacific Island Parties in the following table and any regulations or other instruments having the force of law implemented pursuant to these laws:

| Pacific Island Party           | Laws                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AUSTRALIA                      | Antarctic Marine Living Resources Conservation Act, 1981.<br>Fisheries Management Act, 1991.<br>Fisheries Administration Act, 1991.<br>Statutory Fishing Rights Charge Act, 1991.<br>Fisheries Legislation (Consequential Provisions) Act, 1991.<br>Foreign Fishing Licences Levy Act, 1991.<br>Fishing Levy Act, 1991.<br>Fisheries Agreements (Payments) Act, 1991.<br>Torres Strait Fisheries Act, 1984.<br>Whale Protection Act, 1980. |
| COOK ISLANDS                   | Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979.<br>Territorial Sea and Exclusive Economic Zone Act, 1977.<br>Marine Resources Act, 1989.                                                                                                                                                                                                                                                                                |
| FEDERATED STATES OF MICRONESIA | Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2–28, 2–31, 3–9, 3–10, 3–34, and 3–80.                                                                                                                                                                                                                                                                                                   |
| FIJI                           | Fisheries Act (Cap. 158).<br>Fisheries Regulations (Cap. 158).<br>Marine Spaces Act (Cap. 158A).<br>Marine Spaces (Foreign Fishing Vessels) Regulations, 1979.                                                                                                                                                                                                                                                                             |
| KIRIBATI                       | Fisheries Ordinance, 1979.<br>Fisheries (Amendment) Act, 1984.<br>Marine Zones (Declaration) Act, 1983.<br>Fisheries (Pacific Island States' Treaty with the United States) Act 1988.                                                                                                                                                                                                                                                      |
| MARSHALL ISLANDS               | Title 33, Marine Resources Act, as amended by P.L. 1989–56, P.L. 1991–43, and P.L. 1992–25 of the Marshall Islands Revised Code.                                                                                                                                                                                                                                                                                                           |

| Pacific Island Party | Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NAURU                | Interpretation Act, 1971.<br>Interpretation Act (Amendment) Act No. 1 1975.<br>Interpretation Act (Amendment) Act No. 2 1975.<br>Marine Resources Act, 1978.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| NEW ZEALAND          | Antarctic Marine Living Resources Act, 1981.<br>Continental Shelf Act, 1964.<br>Conservation Act, 1987.<br>Driftnet Prohibition Act, 1991.<br>Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978.<br>Fishing Industry Board Act, 1963.<br>Fisheries Act, 1983.<br>Marine Mammals Protection Act, 1978.<br>Marine Reserves Act, 1971.<br>Marine Pollution Act, 1974.<br>Meat Act, 1964.<br>Territorial Sea and Exclusive Economic Zone Act, 1977.<br>Tokelau (Territorial Sea and Exclusive Economic Zone) Act, 1977.<br>Submarine Cables and Pipelines Protection Act, 1966.<br>Sugar Loaf Islands Marine Protected Area Act, 1991.<br>Wildlife Act, 1953. |
| NIUE                 | Niue Fish Protection Ordinance 1965.<br>Sunday Fishing Prohibition Act 1980.<br>Territorial Sea and Exclusive Economic Zone Act 1978.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PALAU                | Palau National Code, Title 27.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PAPUA NEW GUINEA     | Fisheries Act (Cap 214).<br>Fisheries Regulations (Cap 214).<br>Fisheries (Torres Strait Protected Zone) Act, 1984.<br>National Seas Act (Cap 361).<br>Tuna Resources Management Act (Cap 224).<br>Whaling Act (Cap 225).                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| SOLOMON ISLANDS      | Delimitation of Marine Waters Act, 1978.<br>Fisheries Act, 1972.<br>Fisheries Limits Act, 1977.<br>Fisheries Regulations, 1972.<br>Fisheries (Foreign Fishing Vessels) Regulations, 1981.<br>Fisheries (United States of America) (Treaty) Act 1988.<br>Fisheries Act, 1989.                                                                                                                                                                                                                                                                                                                                                                                              |
| TONGA                | Fisheries Act (Cap 45).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| TUVALU               | Fisheries (Foreign Fishing Vessel) Regulations, 1982.<br>Marine Zones (Declaration) Act, 1983.<br>Foreign Fishing Vessels Licensing (US Treaty) Order 1987.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| VANUATU              | Fisheries Act 1982 (Cap 158).<br>Fisheries Regulations, 1983.<br>Maritime Zones Act 1981 (Cap 138).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| SAMOA                | Exclusive Economic Zone Act, 1977.<br>Territorial Sea Act, 1971.<br>Fisheries Act, 1988.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

*Authorized inspector* means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish and to gather any other information relating to fisheries in the Licensing Area.

*Authorized officer* means any officer who is authorized by the Secretary, or the Secretary of Transportation, or the head of any Federal or state agency that has entered into an enforcement

agreement with the Secretary under section 10(a) of the Act.

*Authorized party officer* means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

*Closed area* means any of the areas in the following table, as depicted on charts provided by the Regional Administrator and as further described in additional information that may be provided by the Regional Administrator:

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| Pacific Island Party           | Area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AUSTRALIA                      | All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25° 30' South with the point of intersection of the meridian of longitude 151° East by the outer limit of the AFZ and all waters south of the parallel of latitude 25° 30' South.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| COOK ISLANDS                   | Territorial Sea.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| FEDERATED STATES OF MICRONESIA | Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts:<br>DMAHTC NO 81019 (2nd. ed., Mar. 1945; revised 7/17/72; corrected through NM 3/78 of 21 June 1978).<br>DMAHTC NO 81023 (3rd. ed., 7 Aug. 1976).<br>DMAHTC NO 81002 (4th. ed., 26 Jan. 1980; corrected through NM 4/80).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| FIJI                           | Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| KIRIBATI                       | Within archipelagic waters as established in accordance with Marine Zones (Declaration) Act 1983; within 12 nautical miles drawn from the baselines from which the territorial seas is measured; and within 2 nautical miles of any anchored fish aggregating device within the Kiribati exclusive economic zone for which notification of its location shall be given by geographical coordinates.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| MARSHALL ISLANDS               | 12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device within the Marshall Islands exclusive economic zone for which notification of its location shall be given by geographical coordinates.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| NAURU                          | The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| NEW ZEALAND                    | Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu; and coordinates as follows:<br>Atafu: 8°35'10" S, 172°29'30" W<br>Nukunonu: 9°06'25" S, 171°52'10" W 9°11'30" S, 171°47'00" W<br>Faka'ofu: 9°22'30" S, 171°16'30" W                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| NIUE                           | Territorial sea and within 3 nautical miles of Beveridge Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PALAU                          | Within 12 nautical miles of all island baselines in the Palau Islands; and the area: commencing at the north-easternmost intersection of the outer limit of the 12 nautical mile territorial sea of Palau by the arc of a circle having a radius of 50 nautical miles and its center at Latitude 07°16'34" North, longitude 134°28'25" East, being at about the center of the reef entrance to Malakal Pass; running thence generally south-easterly, southerly, south-westerly, westerly, north-westerly, northerly and north-easterly along that arc to its intersection by the outer limit of the 12 nautical mile territorial sea; and thence generally northerly, north-easterly, easterly, south-easterly and southerly along that outer limit to the point of commencement.<br>Where for the purpose of these specifications it is necessary to determine the position on the surface of the Earth of a point, line or area, it shall be determined by reference to the World Geodetic System 1984; that is to say, by reference to a spheroid having its center at the center of the Earth and a major (equatorial) radius of 6,378,137 meters and a flattening of 1/298.2572. |
| PAPUA NEW GUINEA               | All territorial seas, archipelagic and internal waters.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| SOLOMON ISLANDS                | All internal waters, territorial seas and archipelagic waters; and such additional waters around the main group archipelago, as defined under the Delimitation of Marine Waters Act 1978, not exceeding sixty nautical miles.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| TONGA                          | All waters with depths of not more than 1,000 meters, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| TUVALU                         | Territorial sea and waters within two nautical miles of all named banks, that is Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu exclusive economic zone, as depicted on the chart entitled "Tuvalu Fishery Limits" prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| VANUATU                        | Archipelagic waters and the territorial sea, and internal waters.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| SAMOA                          | Territorial sea; reefs, banks and sea-mounts and within 2 nautical miles of any anchored fish aggregating device within the Samoa exclusive economic zone for which notification of its location shall be given by geographical coordinates.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

*FFA Vessel Register* means the registry of fishing vessels maintained by the FFA, comprising those vessels

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which are in good standing and licensed to fish in the waters of FFA member countries, including those vessels licensed under § 300.32.

*Fishing* means searching for, catching, taking, or harvesting fish; attempting to search for, catch, take, or harvest fish; engaging in any other activity that can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or aircraft use, relating to the activities described in this definition, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

*Fishing arrangement* means an arrangement between a Pacific Island Party and the owner of a U.S. fishing vessel that complies with section 6(b) of the Act.

*Fishing vessel* or *vessel* means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for commercial fishing, and that is documented under the laws of the United States.

*Licensing Area* means all waters in the Treaty Area except for:

(1) Those waters subject to the jurisdiction of the United States in accordance with international law.

(2) Those waters within closed areas.

(3) Those waters within limited areas closed to fishing.

*Licensing period* means the period of validity of licenses issued in accordance with the Treaty.

*Operator* means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

*Pacific Island Party* means a Pacific island nation that is a party to the Treaty.

*Pacific Islands Forum Fisheries Agency* or *FFA* means the organization established by the 1979 South Pacific Forum Fisheries Agency Convention.

*Regional Administrator* means the Regional Administrator, Pacific Islands Region, NMFS, 1601 Kapiolani Blvd.,

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Suite 1110, Honolulu, HI 96814, facsimile: 808-973-2941, or a designee.

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

*Transship* means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

*Treaty Area* means all waters north of 60° S. lat. and east of 90° E. long., subject to the fisheries jurisdiction of Pacific Island Parties, and all other waters within rhumb lines connecting the following points, except for waters subject to the jurisdiction in accordance with international law of a State which is not a party to the Treaty:

| Point | Latitude    | Longitude                                                                                                                 |
|-------|-------------|---------------------------------------------------------------------------------------------------------------------------|
| A     | 2°35'39" S  | 141°00'00" E                                                                                                              |
| B     | 1°01'35" N  | 140°48'35" E                                                                                                              |
| C     | 1°01'35" N  | 129°30'00" E                                                                                                              |
| D     | 10°00'00" N | 129°30'00" E                                                                                                              |
| E     | 14°00'00" N | 140°00'00" E                                                                                                              |
| F     | 14°00'00" N | 142°00'00" E                                                                                                              |
| G     | 12°30'00" N | 142°00'00" E                                                                                                              |
| H     | 12°30'00" N | 158°00'00" E                                                                                                              |
| I     | 15°00'00" N | 158°00'00" E                                                                                                              |
| J     | 15°00'00" N | 165°00'00" E                                                                                                              |
| K     | 18°00'00" N | 165°00'00" E                                                                                                              |
| L     | 18°00'00" N | 174°00'00" E                                                                                                              |
| M     | 12°00'00" N | 174°00'00" E                                                                                                              |
| N     | 12°00'00" N | 176°00'00" E                                                                                                              |
| O     | 5°00'00" N  | 176°00'00" E                                                                                                              |
| P     | 1°00'00" N  | 180°00'00" E                                                                                                              |
| Q     | 1°00'00" N  | 164°00'00" W                                                                                                              |
| R     | 8°00'00" N  | 164°00'00" W                                                                                                              |
| S     | 8°00'00" N  | 158°00'00" W                                                                                                              |
| T     | 0°00'00"    | 150°00'00" W                                                                                                              |
| U     | 6°00'00" S  | 150°00'00" W                                                                                                              |
| V     | 6°00'00" S  | 146°00'00" W                                                                                                              |
| W     | 12°00'00" S | 146°00'00" W                                                                                                              |
| X     | 26°00'00" S | 157°00'00" W                                                                                                              |
| Y     | 26°00'00" S | 174°00'00" W                                                                                                              |
| Z     | 40°00'00" S | 174°00'00" W                                                                                                              |
| AA    | 40°00'00" S | 171°00'00" W                                                                                                              |
| AB    | 46°00'00" S | 171°00'00" W                                                                                                              |
| AC    | 55°00'00" S | 180°00'00"                                                                                                                |
| AD    | 59°00'00" S | 160°00'00" E                                                                                                              |
| AE    | 59°00'00" S | 152°00'00" E and north along the 152 degrees of East longitude until intersecting the Australian 200-nautical-mile limit. |

*UTC* means Universal Coordinated Time.

*Vessel Monitoring System Unit* or *VMS unit*, sometimes known as a "mobile transmitting unit," means Administrator-approved and NMFS-approved

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VMS unit hardware and software that is installed on a vessel pursuant to § 300.45. The VMS units are a component of the regional vessel monitoring system administered by the FFA, as well as of the vessel monitoring system administered by NMFS, and as such are used to transmit information between the vessel and the Administrator and NMFS and/or other reporting points designated by NMFS.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6149, Feb. 9, 2007; 75 FR 74643, Dec. 1, 2010]

### § 300.32 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless exempted by § 300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a copy or facsimile thereof must be carried on board the vessel when in the Licensing Area or Closed Areas, and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. A vessel may be used to fish in the Licensing Area if the license has been issued but not yet received, provided that the license number is available on board.

(c) The total number of licenses that may be issued and valid at any point in time is 45, five of which shall be reserved for fishing vessels of the United States engaged in joint venture arrangements.

(1) For the purpose of this section, the licenses reserved for vessels engaged in joint venture arrangements are referred to as "joint venture licenses," and the remaining licenses are referred to as "general licenses."

(2) A joint venture arrangement is one in which the subject vessel and its operators are engaged in fishing-related activities designed to maximize the benefits generated for the Pacific Island Parties from the operations of fishing vessels licensed pursuant to the Treaty, as determined by the Administrator. Such activities can include the use of canning, transshipment, vessel slipping and repair facilities located in the Pacific Island Parties; the purchase of equipment and supplies, including fuel supplies, from suppliers located in

the Pacific Island Parties; and the employment of nationals of the Pacific Island Parties on board such vessels.

(d) Licenses are issued by the Administrator. The Administrator will issue licenses only for applications that have been approved by the Regional Administrator. The Regional Administrator's approval is indicated by the signature of the Regional Administrator on the part of the application form labeled "Schedule 1." Upon approval by the Regional Administrator of a license application, the complete application will be forwarded to the Administrator for consideration. Except as provided in paragraph (n) of this section, prior to approving license applications for a given licensing period, the Regional Administrator will issue pre-approvals of license applications that serve the purpose of temporarily reserving approvals up until the time complete applications are due to be received by the Regional Administrator.

(e) The Regional Administrator, in his or her sole discretion, may approve fewer license applications than there are licenses available for any given licensing period or at any given time.

(f) A pre-approval or approval issued by the Regional Administrator pursuant to this section:

(1) Shall not confer any right of compensation to the recipient of such pre-approval or approval;

(2) Shall not create, or be construed to create, any right, title, or interest in or to a license or any fish; and

(3) Shall be considered a grant of permission to the recipient of the pre-approval or approval to proceed with the process of seeking a license from the Administrator.

(g) A pre-approval or approval issued by the Regional Administrator pursuant to this section is subject to being rescinded at any time if the Regional Administrator determines that an administrative error has been made in its granting, false information has been provided by the applicant, circumstances have changed such that the information provided by the applicant is no longer accurate, true or valid, or if the applicant or vessel no longer meets the requirements for licensing under this subpart or under the Act or other applicable law. NMFS will notify



the applicant of its rescission of a pre-approval or approval within 14 days of the rescission. In the event that the Regional Administrator rescinds an approval after the license has been issued, NMFS will notify the Administrator of such, and request that the Administrator immediately revoke the license.

(h) *Application process for general licenses.* (1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a general license.

(2) In order for a general license to be issued for a vessel, an applicant must submit a complete application to, and obtain an application approval from, the Regional Administrator.

(3) Except for the 2011–2012 licensing period, prior to submitting a complete application, an applicant may request pre-approval of an application by the Regional Administrator by submitting an expression of interest. A pre-approval of an application establishes that the applicant is eligible to be considered for one of the available licenses following timely submission of a complete application. Although submission of an expression of interest is entirely voluntary, applications that have not been pre-approved might not be eligible for approval if the number of applications exceeds the number of available licenses for a given licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(4) Except as provided in paragraph (n) of this section, in order to obtain a pre-approval for a given licensing period, either an expression of interest or a complete application must be submitted to and received by the Regional Administrator no later than June 1st of the year preceding the year in which the licensing period begins.

(5) An expression of interest must include the information listed below, which may be submitted by electronic or hard-copy correspondence following instructions provided by the Regional Administrator.

(i) If the expression of interest is for a vessel for which, as of the June 1st due date for submitting such expres-

sion of interest, NMFS has issued an application approval for the licensing period that starts that year (i.e., a renewal of the license is being sought), the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The current name, IRCS, and annual USCG Certificate of Documentation number of the vessel.

(ii) For all other expressions of interest that do not meet the criteria in paragraph (h)(5)(i) of this section, the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The full name and address of each person who is, or who is anticipated to be, an operator of the vessel for which a license is sought, and for each such person, a statement of whether the person is, or is anticipated to be, owner, charterer, and/or master of the vessel.

(C) A statement of whether or not the vessel to be licensed is known, and if it is known, the current name, IRCS, and annual USCG Certificate of Documentation number, if any, of the vessel.

(D) A copy of the vessel's current USCG Certificate of Documentation. If the vessel has not been issued such a document, then a statement of whether application has been or will be made for a USCG Certificate of Documentation, including identification of all endorsements sought in such application.

(E) If the vessel is known, a list of the licensing periods, if any, during which a license for the vessel was issued under this section.

(F) If the vessel is known, a statement of the total amount, in metric tons, of any tuna species landed or transshipped from the vessel at United States ports, including ports located in any of the States, for each of the calendar years 1988 through the current year.

(6) A complete application for a given licensing period may be submitted to the Regional Administrator at any time up to May 15th within the licensing period, but in order to be considered for approval in the event that more applications are received by the Regional Administrator than there are

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licenses available, a complete application must be received by the Regional Administrator as follows:

(i) No later than February 5th of the year in which the licensing period begins; or

(ii) If a pre-approval of the application was issued in accordance with paragraphs (k)(8) or (k)(9) of this section, not later than the date specified by NMFS in the notification of such pre-approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval).

(7) License application forms, which include the "Schedule 1" form and the FFA Vessel Register application form, are available from the Regional Administrator. The complete application must be received by the Regional Administrator as specified in paragraph (h)(6) of this section. An application shall not be complete, and shall not be subject to processing, unless it contains all of the information specified on the "Schedule 1" form and all the items listed in paragraphs (h)(7)(i) through (h)(7)(x) of this section, as follows:

(i) The licensing period for which the license is requested.

(ii) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.

(iii) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

(iv) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, a statement that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.

(v) A copy of the vessel's current annual USCG Certificate of Documentation.

(vi) Electronic versions of full color photographs of the vessel in its current form and appearance, including a bow-to-stern side-view photograph of the vessel that clearly and legibly shows

the vessel markings, and a photograph of every area of the vessel that is marked with the IRCS assigned to the vessel.

(vii) A schematic stowage/well plan for the vessel.

(viii) A copy of the VMS unit installation certificate, issued by the Administrator-authorized person who installed the VMS unit, for the VMS unit installed on the vessel in accordance with § 300.45.

(ix) An FFA Vessel Register application form that includes all the applicable information specified in the form.

(x) In the case of an application for a vessel that does not meet the criteria in paragraph (h)(5)(i) of this section, any information under paragraph (h)(5)(ii) of this section that has not already been provided or that has changed since it was previously submitted.

(i) *Application process for joint venture licenses.* 1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a joint venture license.

(2) The applicant, in coordination with one or more Pacific Island Parties, shall contact the Administrator to determine the specific information and documents that are required by the Administrator in order to obtain an initial approval from the Administrator for a joint venture license. The applicant shall submit such required information and documents directly to the Administrator. Once an initial approval is obtained from the Administrator, the applicant shall submit a complete application package, as described in paragraph (h)(7) of this section, to the Regional Administrator, along with dated documentation of the Administrator's initial approval, and a letter or other documentation from the relevant national authority or authorities of the Pacific Island Party or Parties identifying the joint venture partner or partners and indicating the Party's or Parties' approval of the joint venture arrangement and its or their concurrence that a joint venture license may be issued for the vessel.

(j) *Appeals*—(1) *Eligibility.* Any applicant who is denied a pre-approval or an approval under this section may appeal the denial. The appeal must be made in

writing and must clearly state the basis for the appeal and the nature of the relief that is requested. The appeal must be received by the Regional Administrator not later than 14 days after the date that the notice of denial is postmarked.

(2) *Appeal review.* Upon receipt of an appeal, the Regional Administrator will appoint a designee who will review the basis of the appeal and issue an initial written decision. The written decision will be mailed to the applicant within 30 days of receipt of the appeal. If the appellant does not request a review within 10 days of mailing of the initial decision, the initial decision is the final administrative action of the Department of Commerce. If, within 10 days of mailing of the initial decision, the Regional Administrator receives from the appellant a written request for review of the initial decision, the Assistant Administrator or a designee will review the basis of the appeal and issue a final written decision. The final decision will be made within 30 days of receipt of the request for review of the initial decision. The decision of the Assistant Administrator or designee constitutes the final administrative action of the Department of Commerce.

(k) *Procedures used by the Secretary to review and process applications for general licenses.* The procedures in this paragraph apply to the process used by NMFS, on behalf of the Secretary and in consultation with the Secretary of State, to review expressions of interest and complete applications, and to approve applications. For the purpose of this section, NMFS' approval of an application means the signing by the Regional Administrator of the "Schedule 1" part of the application form, indicating that the application is complete and that it meets the requirements of the Act and of this subpart for forwarding to the Administrator. For the purpose of this section, NMFS' pre-approval of an application means that the Regional Administrator has initially determined that the applicant is eligible for a general license, but that the application has not yet been approved for forwarding to the Administrator.

(1) NMFS will pre-approve no more applications for a given licensing period than there are licenses available

for that licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(2) NMFS will approve no more applications for a given licensing period than there are licenses available for that licensing period.

(3) NMFS will not approve a license application if it determines that:

(i) The application is not in accord with the Treaty, Act, or regulations;

(ii) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(iii) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(iv) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(4) Except as provided in paragraph (n) of this section, no later than July 16th of each year, NMFS will pre-approve applications from among the expressions of interest and complete applications that were received by June 1st of the current year for the licensing period that starts the following year as provided in this paragraph. If the number of expressions of interest and complete applications does not exceed the number of licenses available, all applications that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be pre-approved. If the number of expressions of interest and complete applications exceeds the number of licenses available, those that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be prioritized for pre-approval as follows:

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(i) First priority will be given to expressions of interest and complete applications for vessels for which, as of June 1st of that year, application approvals have been issued by NMFS for the licensing period that starts that year (*i.e.*, anticipated license renewal applications), provided that such vessels continue to satisfy the requirements for licensing under the Act and this subpart, and provided such vessels have no unsatisfied civil penalties or fines assessed by the Secretary under the Act that have become final.

(ii) Second priority will be given to expressions of interest and complete applications scored using the following system, in descending order of the sum of the points assigned:

(A) 15 points will be assigned for a vessel that has been issued, or will be issued by the date complete applications are due to be received by the Regional Administrator under paragraph (h)(6) of this section, a valid USCG Certificate of Documentation with a fishery endorsement.

(B) 1 point will be assigned for each licensing period, starting with the 1988–1989 licensing period, in which a license had been issued for the vessel pursuant to the Act, for a total of no more than 10 points.

(C) 1 point will be assigned for each calendar year in which at least 3,000 metric tons of fish were landed or transshipped from the vessel in United States ports, including ports located in any of the States, as determined by the Regional Administrator. The applicable period shall run from 1988 through the last calendar year prior to the year in which the applied-for licensing period starts, and the total number of points assigned shall be no more than 5.

(D) In the event that two or more vessels receive the same sum number of points under paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(C) of this section, priority will be given to the vessel from which the greatest amount of fish, by weight, was landed or transshipped in United States ports, including ports located in any of the States, starting in calendar year 1988 and ending in the year prior to the year in which the applied-for licensing period starts, as determined by the Regional Adminis-

trator. In the event that that does not resolve the tie, priority will be given by lottery, which will be conducted by the Regional Administrator.

(5) Except as provided in paragraph (n) of this section, no later than July 26th of each year, NMFS will send notifications by mail to all applicants that submitted expressions of interest or complete applications by June 1st of that year, indicating whether their applications (for the licensing period that starts the following year) have been pre-approved.

(6) No later than March 7th of each year, NMFS will approve applications (for the licensing period that starts that year) that satisfy all of the following conditions:

(i) The application was pre-approved;

(ii) The information associated with the application has not changed since the point of pre-approval in a way such that pre-approval would not have been made using the updated information;

(iii) The complete application was received by February 5th of the same year; and

(iv) The applicant satisfies the requirements for licensing under the Act and this subpart.

(7) No later than March 17th of each year, NMFS will notify all applicants (for the licensing period that starts that year) who submitted complete applications by February 5th of that year, whether their applications have been approved under paragraph (k)(6) of this section, and in cases where they have not, whether their applications are being considered for approval under paragraph (k)(8) of this section.

(8) In the event that additional licenses for a given licensing period are available after issuing the approvals under paragraph (k)(6) of this section, NMFS will, after final administrative action by the Department of Commerce on any appeals made under paragraph (j) of this section, do the following:

(i) If the number of outstanding expressions of interest (*i.e.*, expressions of interest that have not been pre-approved) received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications (*i.e.*, complete applications that have

not been approved) received by February 5th of the year in which the licensing period begins, exceeds the number of licenses available, NMFS will review all such outstanding expressions of interest and complete applications and apply the process described in paragraphs (k)(9)(i)(A) through (k)(9)(i)(C) of this section to pre-approve and approve applications from among that pool of applicants;

(ii) If the number of outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications received by February 5th of the year in which the licensing period begins, does not exceed the number of licenses available:

(A) No later than June 15th of the year in which the licensing period begins, NMFS will pre-approve all such outstanding expressions of interest and complete applications that satisfy the relevant requirements for licensing under the Act and this subpart;

(B) No later than June 25th of the year in which the licensing period begins, NMFS will notify all such outstanding applicants of the pre-approvals, and for those applicants that submitted expressions of interest but not complete applications, also notify them of the date by which a complete application must be received in order to be issued an application approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval);

(C) NMFS will review all complete applications received by the required date from applicants pre-approved under paragraph (8)(ii)(A) of this section, and within 30 days of such receipt, approve the application, if and as appropriate and if the applicant satisfies the requirements for licensing under the Act and this subpart; and

(D) If and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the total number of licenses available under paragraph (c) of this section, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licens-

ing period and, as they are received and in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.

(iii) Within 10 days of approving an application, NMFS will notify the applicant.

(9) If a license or application approval that has been issued for a given licensing period becomes available before or during that licensing period, NMFS will do the following:

(i) If there are any outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins or outstanding complete applications received by February 5th of the year in which the licensing period begins, NMFS will review all such outstanding expressions of interest and complete applications and pre-approve and approve applications for that license from among that pool as follows:

(A) Within 45 days of NMFS becoming aware of the availability of the license, NMFS will pre-approve an application using the prioritization criteria and point-assigning system described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section;

(B) Within 55 days of NMFS becoming aware of the availability of the license NMFS will notify all active applicants as to whether their applications have been pre-approved, and for those applications that have been pre-approved, notify each applicant of the date by which a complete application, if not already received, must be received (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval); and

(C) Within 30 days of receiving a complete application that had been pre-approved, NMFS will approve the application, if and as appropriate and if the applicant satisfies the requirements of this subpart.

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(ii) If there are no outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins and no outstanding complete applications received by February 5th of the year in which the licensing period begins, if and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the number of licenses available, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.

(iii) Within 10 days of approving an application, NMFS will notify the applicant.

(l) *Procedures used by the Secretary to review and process applications for joint venture licenses.* NMFS, on behalf of the Secretary and in consultation with the Secretary of State, will review and approve applications for joint venture licenses as described in paragraph (k) of this section for general licenses, except that NMFS will not consider expressions of interest for joint venture licenses or pre-approve applications for joint venture licenses. In the event that NMFS receives for a given licensing period more applications for joint venture licenses than there are licenses available, it will approve the applications in the chronological order that the Administrator has provided its initial approval.

(m) *Transferability of application approvals.* Application approvals from NMFS are not transferable among vessel owners or operators or license applicants. Application approvals are transferable among vessels, subject to the following requirements:

(1) A vessel operator may seek to transfer a general or joint venture license to another vessel that meets the requirements for licensing under this

subpart and the Act, only if the license has been valid for the vessel for at least 365 consecutive days and all the fees required by the Administrator for the current licensing period have been paid to the Administrator. The vessel operator may seek to transfer the license by submitting a written request to the Regional Administrator along with a complete application for the other vessel as described in paragraph (h)(7) of this section. Any such transfer may be subject to additional fees for the registration of the vessel on the FFA Vessel Register, as specified in paragraph (b) of §300.45.

(2) Upon receipt of a request and complete application under paragraph (m)(1) of this section, the Regional Administrator, after determining that all the fees required for the vessel by the Administrator for the current licensing period have been paid, that the ownership of the licensed vessel and the ownership of the vessel to which the application approval would be transferred are identical, and that the transferee vessel meets the requirements for licensing under this subpart and the Act, will approve the application and notify the applicant of such within 10 days of the determination.

(3) If a licensed vessel is lost or destroyed, and the operators of the vessel apply for a license for another vessel for the licensing period during which the vessel was lost, or for either of the two subsequent licensing periods, NMFS will consider the replacement vessel to have the license application approval status and history of the lost or destroyed vessel for the purpose of applying the prioritization criteria of paragraph (k)(4) of this section, provided that the ownership of the lost or destroyed vessel and the ownership of the replacement vessel, as determined by the Regional Administrator, are identical, and the replacement vessel meets the requirements for licensing under this subpart and the Act.

(n) *Procedures for 2011–2012 licensing period.* For the licensing period that starts June 15, 2011, and for that licensing period only, pre-approvals may not be sought and will not be issued by NMFS. NMFS will rank order those applications received by February 5, 2011,

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for the 2011–2012 licensing period by applying the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, except that in lieu of using the criteria in (k)(4)(i), first priority will be given to applications for vessels that as of February 5, 2011, have valid licenses for the 2010–2011 licensing period.

[75 FR 74644, Dec. 1, 2010]

#### § 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

#### § 300.34 Reporting requirements.

(a) Holders of licenses issued under § 300.32 shall comply with the reporting requirements of this section with respect to the licensed vessels.

(b) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Administrator.

(c) The operator of any vessel licensed under § 300.32 must prepare and submit accurate, complete, and timely notifications, requests, and reports with respect to the licensed vessel, as described in paragraphs (c)(1) through (10) of this section.

(1) *Catch report forms.* A record of catch, effort and other information must be maintained on board the vessel, on catch report forms (also known as “Regional Purse Seine Logsheets”, or RPLs) provided by the Regional Administrator. At the end of each day that the vessel is in the Licensing Area, all information specified on the form must, for that day, be recorded on the form. The completed catch report form must be mailed by registered airmail to the Administrator within 14 days of the vessel’s next entry into port for the purpose of unloading its

fish catch. A copy of the completed catch report form must also be submitted to, and received by, the Regional Administrator within 2 days of the vessel reaching port.

(2) *Unloading and transshipment logsheet forms.* At the completion of any unloading or transshipment of fish from the vessel, all the information specified on unloading and transshipment logsheet forms provided by the Regional Administrator must, for that unloading or transshipment, be recorded on such forms. A separate form must be completed for each fish processing destination to which the unloaded or transshipped fish are bound. The completed unloading and transshipment logsheet form or forms must be mailed by registered airmail to the Administrator within 14 days of the completion of the unloading or transshipment. The submitted form must be accompanied by a report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, and such report must be signed by the receiver or receivers. A copy of the completed unloading and transshipment logsheet, including a copy of the accompanying report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, must also be submitted to, and received by, the Regional Administrator within 2 days of the completion of the unloading or transshipment.

(3) *Port departure reports.* Before the vessel’s departure from port for the purpose of beginning a fishing trip in the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type (“LBEG”); Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date of departure. This information must be reported in the format provided by the Regional Administrator.

(4) *Entry into port for unloading reports.* At least 24 hours before the vessel’s entry into port for the purpose of

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unloading fish from any trip involving fishing within the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type ("LFIN"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date and time (in UTC) of entry into port. This information must be reported in the format provided by the Regional Administrator.

(5) *Intent to transship notification and request.* At least 48 hours before transshipping any or all of the fish on board the vessel, a notification must be submitted to the Administrator and a request must be submitted to the Pacific Island Party in whose jurisdiction the transshipment is requested to occur. The notification to the Administrator and the request to the Pacific Island Party may be identical. The notification and request must include the following information: Name of vessel; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board the vessel (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and the date, time (in UTC), and location where such transshipment is requested to occur. The notification to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The request to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(6) *Zone entry and exit reports.* Each time the vessel enters or exits the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("ZENT" for entry or "ZEXT" for exit); FFA Regional Register number; trip begin date; date and time (in UTC) of the entry or exit; IRCS; vessel position (latitude and lon-

gitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(7) *Weekly reports.* Each Wednesday while the vessel is within the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("WEEK"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and whether or not there is a vessel observer on board ("Y" or "N"). This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(8) *Port entry reports.* At least 24 hours before the vessel's entry into port of any Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("PENT"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; estimated time (in UTC) of entry into port; port name; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(9) *Transshipment reports.* Upon completion of transshipment of any or all of the fish on board the vessel, a report must be submitted to the Administrator and to the Pacific Island Party



in whose jurisdiction the transshipment occurred. The report must include the following information: Report type ("TRANS"); FFA Regional Register number; trip begin date; date and time (in UTC) of the transshipment; IRCS; vessel position at time of transshipment (latitude and longitude to nearest minute of arc); amount of fish transshipped (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; name of vessel to which the fish were transshipped; and the destination of the transshipped fish. The report to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The report to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(10) *Other reports and notifications to Pacific Island Parties.* Reports and notifications must be submitted to the relevant Pacific Island Parties in each of the circumstances and in the manner described in the subparagraphs of this paragraph. Unless otherwise indicated in this paragraph, the reports must be prepared in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(i) *Australia.* (A) Each day while the vessel is within the Australian Fishing Zone, a report must be submitted that includes the following information: Vessel position (latitude and longitude to nearest minute of arc); and the amount of catch made during the previous day, by species.

(B) At least 24 hours before entering the Australian Fishing Zone, a notification must be submitted that indicates an intent to enter the Australian Fishing Zone.

(ii) *Fiji.* (A) Each day while the vessel is in Fiji fisheries waters, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; and vessel position at the time of the report (latitude and longitude to nearest minute of arc).

(B) Each week while the vessel is in Fiji fisheries waters, a report must be submitted that includes the amount of the catch made during the preceding week, by species.

(iii) *Kiribati.* (A) At least 24 hours before entering a Closed Area under the jurisdiction of Kiribati, a notification must be submitted that includes the following information: vessel name; IRCS; vessel position at the time of the report (latitude and longitude to nearest minute of arc); the reason for entering the Closed Area; and the estimated time (in UTC) of entry into the Closed Area (latitude and longitude to nearest minute of arc).

(B) Immediately upon entry into or exit from a Closed Area under the jurisdiction of Kiribati, a report must be submitted that includes the following information: report type ("CAENT" for entry or "CAEXT" for exit); the number of the vessel's license issued under §300.32; IRCS; date and time (in UTC) of the report; vessel position (latitude and longitude to nearest minute of arc); amount of the catch on board the vessel, by species; and status of the boom ("up" or "down"), net ("deployed" or "stowed"), and skiff ("deployed" or "stowed").

(C) At least 24 hours prior to fueling the vessel from a tanker in the area of jurisdiction of Kiribati, a report must be submitted that includes the following information: report type ("SBUNK"); the number of the vessel's license issued under §300.32; IRCS; trip start date; name of port from which trip started; amount of the catch on board the vessel, by species; estimated time of bunkering; estimated position of bunkering (latitude and longitude to nearest minute of arc); and name of tanker.

(D) After fueling the vessel from a tanker in the area of jurisdiction of Kiribati, but no later than 12 noon local time on the following day, a report must be submitted that includes the following information: report type ("FBUNK"); the number of the vessel's license issued under §300.32; IRCS; start time of bunkering; end time of bunkering; amount of fuel received, in kiloliters; and name of tanker.

(iv) *New Zealand.* (A) At least 24 hours before entering the exclusive

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economic zone of New Zealand, a notification must be submitted that includes the following information: name of vessel; IRCS; position of point of entry into the exclusive economic zone of New Zealand (latitude and longitude to nearest minute of arc); amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").

(B) For each day that the vessel is in the exclusive economic zone of New Zealand, a notification must be submitted no later than noon of the following day of the vessel's position (latitude and longitude to nearest minute of arc) at noon.

(C) For each week or portion thereof that the vessel is in the exclusive economic zone of New Zealand, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Wednesday (local time). The report must include the amount of the catch taken in the exclusive economic zone of New Zealand during the reporting period.

(D) At least 10 days prior to an intended transshipment in an area under the jurisdiction of New Zealand, a notification must be submitted that includes the intended port, date, and time of transshipment.

(E) At least 24 hours prior to exiting the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: position of the intended point of exit (latitude and longitude to nearest minute of arc); the amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").

(v) *Solomon Islands*. (A) At least 24 hours prior to entry into Solomon Islands Fisheries Limits, a report must be submitted that includes the following information: expected vessel position (latitude and longitude to nearest minute of arc) and expected date and time of entry.

(B) For each week or portion thereof that the vessel is in the exclusive economic zone of Solomon Islands, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted

and received by noon of the following Tuesday (local time). The report must include the amount of the catch taken and the number of fishing days spent in the exclusive economic zone of Solomon Islands during the reporting period.

(vi) *Tonga*. (A) Each day while the vessel is in the exclusive economic zone of Tonga, a report must be submitted that includes the vessel's position (latitude and longitude to nearest minute of arc).

(B) [Reserved]

(vii) *Tuvalu*. (A) At least 24 hours prior to entering Tuvalu fishery limits, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; the number of the vessel's license issued under § 300.32; intended vessel position (latitude and longitude to nearest minute of arc) at entry; and amount of catch on board the vessel, by species.

(B) Every seventh day that the vessel is in Tuvalu fishery limits, a report must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

(C) Immediately upon exit from Tuvalu fishery limits, a notification must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

[72 FR 6151, Feb. 9, 2007]

### § 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with

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the background extending to provide a border around the mark of not less than 16.7 cm.

(b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

### § 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

### § 300.37 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

### § 300.38 Prohibitions.

(a) Except as provided for in § 300.39, in addition to the prohibitions in § 300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) To violate the Act or any provision of any regulation or order issued pursuant to Act.

(2) To use a vessel for fishing in violation of an applicable national law.

(3) To violate the terms and conditions of any fishing arrangement to which that person is a party.

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(4) To use a vessel for fishing in any Closed Area.

(5) To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.

(6) To refuse to comply with the instructions of an authorized officer or authorized party officer relating to fishing activities under the Treaty.

(7) To refuse to permit an authorized inspector full access to any place where fish taken in the Licensing Area is unloaded.

(8) To refuse to allow an authorized inspector to remove samples of fish from a vessel that fished in the Licensing Area.

(9) To forcibly assault, resist, oppose, impede, intimidate, or interfere with:

(i) Any authorized officer, authorized party officer or authorized inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or

(ii) An observer in the conduct of observer duties under the Treaty.

(10) To transship fish on board a vessel that fished in the Licensing Area, except in accordance with the requirements of § 300.46.

(11) To fail to have installed, allow to be programmed, carry, or have operational a VMS unit while in the Treaty Area as specified in § 300.45(a).

(12) To fail to activate a VMS unit, to interrupt, interfere with, or impede the operation of a VMS unit, to tamper with, alter, damage, or disable a VMS unit, or to move or remove a VMS unit without prior notification as specified in § 300.45(e).

(13) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area, to fail to submit manual position reports as specified in § 300.45(f).

(14) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area and if directed by the Administrator or an authorized officer, to fail to stow fishing gear or take the vessel to a designated port as specified in § 300.45(f).

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(15) To fail to repair or replace a VMS unit as specified in §300.45(h).

(b) Except as provided for in §300.39, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:

(1) To use a vessel to fish unless validly licensed as required by the Administrator.

(2) To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental bycatch.

(3) To use a vessel for fishing by any method, except the purse-seine method.

(4) To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license.

(5) To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels.

(6) To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under §300.42 (section 11 of the Act).

(7) Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel, unless it is identified on the license application for the vessel, or any amendment thereto.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6153, Feb. 9, 2007]

### § 300.39 Exceptions.

(a) The prohibitions of §300.38 and the licensing requirements of §300.32 do not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty Area.

(b) The prohibitions of §300.38(a)(4), (a)(5), and (b)(3) do not apply to fishing under the terms and conditions of a fishing arrangement.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6153, Feb. 9, 2007]

### § 300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

### § 300.41 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

### § 300.42 Findings leading to removal from fishing area.

(a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

(1) The fishing vessel—

(i) While fishing in the Licensing Area did not have a license issued under §300.32 to fish in the Licensing Area, and that under the terms of the Treaty the fishing is not authorized to be conducted in the Licensing Area without such a license.

(ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;

(iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

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(iv) Was not represented by an agent for service of process in accordance with the Treaty; or

(2) There is probable cause to believe that the fishing vessel—

(i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;

(ii) Used an aircraft in violation of section 5(b)(7) of the Act; or

(iii) Was involved in an incident in which section 5(a)(7) of the Act was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made by a Pacific Island Party that such Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1) (iii) or (iv) of this section (subsections 11(a)(1) (C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) An order issued in accordance with this section is not subject to judicial review.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6154, Feb. 9, 2007]

### § 300.43 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and doc-

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umentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.

(3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary.

(4) To carry out observer duties safely.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

### § 300.44 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

### § 300.45 Vessel Monitoring System.

(a) *Applicability.* Holders of vessel licenses issued under § 300.32 are required, in order to have the licensed vessel in the Treaty Area, to:

(1) Have installed a VMS unit on board the licensed vessel;

(2) Allow the Administrator, its agent, or a person authorized by the Administrator to program the VMS unit to transmit position and related information to the Administrator;

(3) If directed by the Regional Administrator, allow NMFS, its agent, or a person authorized by NMFS to program the VMS unit to transmit position and related information to NMFS; and

(4) Carry and have operational the VMS unit at all times while in the

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Treaty Area, except as provided in paragraphs (f) and (g) of this section.

(b) *FFA Vessel Register*. Purse seine vessels must be in good standing on the FFA Vessel Register maintained by the Administrator in order to be licensed under the Treaty. FFA Vessel Register application forms may be obtained from the Regional Administrator or the Administrator or from the FFA Web site: <http://www.ffa.int>. Purse seine vessel owners or operators must submit completed FFA Vessel Register applications to the Regional Administrator for transmittal to the Administrator and pay fees for registration of their vessel(s) on the FFA Vessel Register annually. The vessel owner or operator may submit a completed FFA Vessel Register application form at any time, but the application must be received by the Regional Administrator at least seven days before the first day of the next licensing period to avoid the potential lapse of the registration and license between licensing periods.

(c) *VMS unit installation*. A VMS unit required under this section must be installed by a person authorized by the Administrator. A list of Administrator-authorized VMS unit installers may be obtained from the Regional Administrator or the Administrator.

(d) *Hardware and software specifications*. The VMS unit installed and carried on board a vessel to comply with the requirements of this section must consist of hardware and software that is approved by the Administrator and approved by NMFS. A current list of hardware and software approved by the Administrator may be obtained from the Administrator. A current list of hardware and software approved by NMFS may be obtained from NMFS.

(e) *Service activation*. Other than when in port or in a shipyard and having given proper notification to the Administrator as specified in paragraph (g) of this section, the owner or operator of a vessel licensed under § 300.32 must, when the vessel is in the Treaty Area:

(1) Activate the VMS unit on board the licensed vessel to transmit automatic position reports;

(2) Ensure that no person interrupts, interferes with, or impedes the operation of the VMS unit or tampers with,

alters, damages, or disables the VMS unit, or attempts any of the same; and

(3) Ensure that no person moves or removes the VMS unit from the installed position without first notifying the Administrator by telephone, facsimile, or e-mail of such movement or removal.

(f) *Interruption of VMS unit signal*. When a vessel owner or operator is notified by the Administrator or an authorized officer that automatic position reports are not being received, or the vessel owner or operator is otherwise alerted or aware that transmission of automatic position reports has been interrupted, the vessel owner and operator must comply with the following:

(1) The vessel owner or operator must submit manual position reports that include vessel name, call sign, current position (latitude and longitude to the nearest minute), date, and time to the Administrator by telephone, facsimile, or e-mail at intervals of no greater than eight hours or a shorter interval if and as specified by the Administrator or an authorized officer. The reports must continue to be submitted until the Administrator has confirmed to the vessel owner or operator that the VMS unit is properly transmitting position reports. If the manual position reports cannot be made, the vessel operator or owner must notify the Administrator of such as soon as possible, by any means possible.

(2) If directed by the Administrator or an authorized officer, the vessel operator must immediately stow the fishing gear in the manner described in § 300.36, take the vessel directly to a port designated by the Administrator or authorized officer, and notify the Administrator by telephone, facsimile, or e-mail as soon as possible that the vessel is being taken to port with fishing gear stowed.

(g) *Shutdown of VMS unit while in port or in shipyard*. When a vessel is in port and not moving, the VMS unit may be shut down, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in port and of the intended shutdown, and only as long as manual position reports as described in paragraph (f)(1) of

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this section are submitted to the Administrator at intervals of no greater than 24 hours or a shorter interval if and as specified by the Administrator or an authorized officer. If the VMS unit is shut down while the vessel is in port, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from port. When the vessel is in a shipyard, the VMS unit may be shut down and the submission of manual position reports is not required, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in the shipyard and of the intended VMS unit shutdown. If the VMS unit is shut down while the vessel is in a shipyard, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from the shipyard.

(h) *VMS unit repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have the VMS unit repaired or replaced prior to the vessel's next trip. If the VMS unit is replaced, the new VMS unit must be installed by an Administrator-authorized VMS unit installer, as specified in paragraph (c) of this section. In making such repairs or replacements, conformity with the current requirements must be met before the vessel may lawfully operate under the Treaty.

(i) *Access to data.* As a condition to obtaining a license, holders of vessel licenses issued under §300.32 must allow the Regional Administrator, an authorized officer, the Administrator or an authorized party officer or designees access to the vessel's position data obtained from the VMS unit at the time of, or after, its transmission to the vendor or receiver.

[72 FR 6154, Feb. 9, 2007, as amended at 75 FR 74648, Dec. 1, 2010]

### § 300.46 Transshipping requirements.

(a) *Applicability.* This section applies to vessels licensed under §300.32.

(b) Transshipping may only be done at the time and place authorized for transshipment by the Pacific Island

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Parties, following the notification and request requirements of §300.34(c)(5).

(c) The operator and each member of the crew of a vessel from which any fish taken in the Licensing Area is transshipped must:

(1) Allow and assist any person identified as an officer of the Pacific Island Party to:

(i) Have full access to the vessel and any place where such fish is being transshipped and the use of facilities and equipment that the officer may determine is necessary to carry out his or her duties;

(ii) Have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;

(iii) Remove samples;

(iv) Have full access to the vessel's records, including its log and documentation, for the purpose of inspection and copying; and

(v) Gather any other information required to fully monitor the activity without interfering unduly with the lawful operation of the vessel; and

(2) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any person identified as an officer of the Pacific Island Party in the performance of his or her duties.

(d) Transshipping at sea may only be done:

(1) In a designated area in accordance with such terms and conditions as may be agreed between the operator of the vessel and the Pacific Island Party in whose jurisdiction the transshipment is to take place;

(2) In accordance with the requirements of §300.34; and

(3) If the catch is transshipped to a carrier vessel duly authorized in accordance with national laws.

[72 FR 6155, Feb. 9, 2007]

## Subpart E—Pacific Halibut Fisheries

AUTHORITY: 16 U.S.C. 773–773k.

### § 300.60 Purpose and scope.

This subpart implements the North Pacific Halibut Act of 1982 (Act) and is intended to supplement, not conflict with, the annual fishery management

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measures adopted by the International Pacific Halibut Commission (Commission) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention).

### § 300.61 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Convention, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Convention, the definition in this section shall apply.

*Alaska Native tribe* means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a Federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(g)(2) of this part.

*Area 2A* includes all waters off the States of California, Oregon, and Washington.

*Area 2C* includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58° 11' 54" N. lat., 136° 38' 24" W. long.) and south and east of a line running 205° true from said light.

*Area 3A* means all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true.

*Charter halibut permit* means a permit issued by the National Marine Fisheries Service pursuant to § 300.67.

*Charter vessel angler*, for purposes of §§ 300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide.

*Charter vessel fishing trip*, for purposes of §§ 300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.

*Charter vessel guide*, for purposes of §§ 300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide

license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

*Charter vessel operator*, for purposes of § 300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

*Chiniak Bay* means all waters bounded by the shoreline and straight lines connecting the coordinates in the order listed:

(1) North from Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.);

(2) To Buoy #1 at Williams Reef (57°50.36' N. lat., 152°8.82' W. long.);

(3) To East Cape on Spruce Island (57°54.89' N. lat., 152°19.45' W. long.);

(4) To Termination Point on Kodiak Island (57°51.31' N. lat., 152°24.01' W. long.); and

(5) Connecting to a line running counterclockwise along the shoreline of Kodiak Island to Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.).

*Commercial fishing* means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

*Commission* means the International Pacific Halibut Commission.

*Commission regulatory area* means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

*Community charter halibut permit* means a permit issued by NMFS to a Community Quota Entity pursuant to § 300.67.

*Crew member*, for purposes of §§ 300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

*Customary trade* means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for anything other than items of significant value.

*Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of



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fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

*Fishing week*, for purposes of § 300.65(d), means a time period that begins at 0001 hours, A.l.t., Monday morning and ends at 2400 hours, A.l.t., the following Sunday night.

*Guideline harvest level (GHL)* means the level of allowable halibut harvest by the charter vessel fishery.

*Halibut harvest* means the catching and retaining of any halibut.

*Head-on length* means a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

*Individual Fishing Quota (IFQ)*, for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of halibut.

*IFQ fishing trip*, for purposes of the subpart, means the period beginning when a vessel operator commences harvesting IFQ halibut and ending when the vessel operator lands any species.

*IFQ halibut* means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at § 679.2 of this title.

*Military charter halibut permit* means a permit issued by NMFS to a United States Military Morale, Welfare and Recreation Program pursuant to § 300.67.

*Overall length* of a vessel means the horizontal distance, rounded to the nearest ft/meter, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

*Person* includes an individual, corporation, firm, or association.

*Power hauling* means using electrically, hydraulically, or mechanically powered devices or attachments or other assisting devices or attachments to deploy and retrieve fishing gear. Power hauling does not include the use of hand power, a hand powered crank, a fishing rod, a downrigger, or a hand troll gurdy.

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*Rural* means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community of Alaska listed at § 300.65(g)(1) or an area of Alaska described at § 300.65(g)(3) in which the non-commercial, customary, and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary, and traditional use of halibut.

*Rural resident* means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:

(1) An individual domiciled in a rural community listed in the table at § 300.65(g)(1) and who has maintained a domicile in rural communities listed in the table at § 300.65(g)(1), or in rural areas described at § 300.65(g)(3), for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country; or

(2) An individual domiciled in a rural area described at § 300.65(g)(3) and who has maintained a domicile in rural areas described at § 300.65(g)(3), or in rural communities listed in the table at § 300.65(g)(1), for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

*Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached.

*Sport fishing* means:

(1) In regulatory area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(2) In waters in and off Alaska, all fishing other than commercial fishing and subsistence fishing.

*Sport fishing guide services*, for purposes of §§ 300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

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*Subarea 2A-1* includes all U.S. waters off the coast of Washington that are north of 46°53'18" N. lat. and east of 125°44'00" W. long., and all inland marine waters of Washington.

*Subsistence* means, with respect to waters in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

*Subsistence halibut* means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

*Subsistence halibut registration certificate* (SHARC) means documentation, issued by NMFS, of the registration required at § 300.65(i).

*Treaty Indian tribes* means the Hoh, Jamestown S'Klallam, Lower Elwha S'Klallam, Lummi, Makah, Port Gamble S'Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, Tulalip, and Nooksack tribes.

*Valid*, with respect to a charter halibut permit for purposes of §§ 300.66 and 300.67, means the charter halibut permit that is currently in effect.

[61 FR 35550, July 5, 1996, as amended at 64 FR 52469, Sept. 29, 1999; 68 FR 18156, Apr. 15, 2003; 68 FR 47264, Aug. 8, 2003; 72 FR 30727, June 4, 2007; 72 FR 67669, Nov. 30, 2007; 73 FR 30523, May 28, 2008; 73 FR 52797, Sept. 11, 2008; 73 FR 54939, Sept. 24, 2008; 74 FR 11697, Mar. 19, 2009; 74 FR 21227, May 6, 2009; 74 FR 57109, Nov. 4, 2009; 75 FR 599, Jan. 5, 2010; 76 FR 6571, Feb. 7, 2011]

### § 300.62 Annual management measures.

Annual management measures may be added and modified through adoption by the Commission and publication in the FEDERAL REGISTER by the Assistant Administrator, with immediate regulatory effect. Such measures may include, *inter alia*, provisions governing: Licensing of vessels, inseason actions, regulatory areas, fishing periods, closed periods, closed areas, catch limits (quotas), fishing period limits, size limits, careful release of halibut, vessel clearances, logs, receipt and possession of halibut, fishing gear, retention of tagged halibut, supervision of unloading and weighing, and sport fishing for halibut. The Assistant Administrator will publish the Commission's

regulations setting forth annual management measures in the FEDERAL REGISTER by March 15 each year. Annual management measures may be adjusted inseason by the Commission.

### § 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.

(b)(1) Each year, before January 1, NMFS will publish a proposal to govern the recreational fishery under the CSP for the following year and will seek public comment. The comment period will extend until after the Commission's annual meeting, so the public will have the opportunity to consider the final area 2A total allowable catch (TAC) before submitting comments. After the Commission's annual meeting and review of public comments, NMFS will publish in the FEDERAL REGISTER the final rule governing sport fishing in area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the FEDERAL REGISTER along with the annual salmon management measures.

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the sablefish primary fishery north of 46°53.30' N. lat. (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.231. This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt.) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary

to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the FEDERAL REGISTER. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the sablefish primary fishery north of 46°53.30' N. lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30' N. lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

(4) The commercial longline fishery in area 2A is governed by the annual management measures published pursuant to §§ 300.62 and 300.63.

(5) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under § 300.62.

(c) *Flexible Inseason Management Provisions for Sport Halibut Fisheries in Area 2A.* (1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), or their designees, is authorized to modify regulations during the season after making the following determinations:

(i) The action is necessary to allow allocation objectives to be met.

(ii) The action will not result in exceeding the catch limit for the area.

(iii) If any of the sport fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective quotas by September 30, NMFS may

take inseason action to transfer any projected unused quota to another Washington sport subarea.

(iv) If any of the sport fishery subareas south of Leadbetter Point, Washington, are not projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(i) Modification of sport fishing periods;

(ii) Modification of sport fishing bag limits;

(iii) Modification of sport fishing size limits;

(iv) Modification of sport fishing days per calendar week; and

(v) Modification of subarea quotas.

(3) *Notice procedures.* (i) Actions taken under this section will be published in the FEDERAL REGISTER.

(ii) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206-526-6667 or 800-662-9825 (May through October) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) *Effective dates.* (i) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(ii) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the FEDERAL REGISTER. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15

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days after publication of the action in the FEDERAL REGISTER.

(iii) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) *Availability of data.* The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, Washington.

(d) *Fishery Election in Area 2A.* (1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The sport fishery under section 26 of the annual domestic management measures and IPHC regulations;

(ii) The commercial directed fishery for halibut during the fishing period(s) established in section 8 of the annual domestic management measures and IPHC regulations and/or the incidental retention of halibut during the sablefish primary fishery described at 50 CFR 660.231; or

(iii) The incidental catch fishery during the salmon troll fishery as authorized in section 8 of the annual domestic management measures and IPHC regulations.

(2) No person shall fish for halibut in the sport fishery in Area 2A under section 24 of the annual domestic management measures and IPHC regulations from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in section 8 of the annual domestic management measures and IPHC regulations and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery

during the salmon troll fishery as authorized in Section 8 of the annual domestic management measures and IPHC regulations.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under section 8 of the annual domestic management measures and IPHC regulations taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 of the annual domestic management measures and IPHC regulations in Area 2A.

(e) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* (1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N. lat. Between the U.S./Canada border and 46°16' N. lat., the eastern boundary of the RCA, is the shoreline. Between 46°16' N. lat. and 43°00' N. lat., the RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR

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660.71(e). Between 43°00' N. lat. and 42°00' N. lat., the RCA is defined along an eastern boundary by a line approximating the 20-fm (37-m) depth contour. Coordinates for the 20-fm (37-m) boundary are listed at 50 CFR 660.71(b). Between 42°00' N. lat. and 40°10' N. lat., the RCA is defined along an eastern boundary by the 20-fm (37-m) depth contour. Between the U.S./Canada border and 40°10' N. lat., the RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

(2) Non-treaty commercial vessels operating in the incidental catch fishery during the sablefish primary fishery north of Pt. Chehalis, Washington, in Area 2A are required to fish outside of a closed area. Under Pacific Coast groundfish regulations at 50 CFR 660.230, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA). It is unlawful to take and retain, possess, or land halibut taken with limited entry fixed gear within the North Coast Commercial YRCA. The North Coast Commercial YRCA is an area off the northern Washington coast, overlapping the northern part of the North Coast Recreational YRCA, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70(b).

(3) Non-treaty commercial vessels operating in the incidental catch fishery during the salmon troll fishery in Area 2A are required to fish outside of a closed area. Under the Pacific Coast groundfish regulations at 50 CFR 660.330(10), fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess or land fish within the Salmon Troll YRCA. The Salmon Troll YRCA is an area off the northern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.70(c), and in salmon regulations at 50 CFR 660.405.

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(f) The 30-fm (55-m) depth contour between the U.S. border with Canada and 40°10.00' N. lat. is defined by straight lines connecting all of the following points in the order stated:

- (1) 48°24.79' N. lat., 124°44.07' W. long.;
- (2) 48°24.80' N. lat., 124°44.74' W. long.;
- (3) 48°23.94' N. lat., 124°44.70' W. long.;
- (4) 48°23.51' N. lat., 124°45.01' W. long.;
- (5) 48°22.59' N. lat., 124°44.97' W. long.;
- (6) 48°21.75' N. lat., 124°45.26' W. long.;
- (7) 48°21.23' N. lat., 124°47.78' W. long.;
- (8) 48°20.32' N. lat., 124°49.53' W. long.;
- (9) 48°16.72' N. lat., 124°51.58' W. long.;
- (10) 48°10.00' N. lat., 124°52.58' W. long.;
- (11) 48°05.63' N. lat., 124°52.91' W. long.;
- (12) 47°53.37' N. lat., 124°47.37' W. long.;
- (13) 47°40.28' N. lat., 124°40.07' W. long.;
- (14) 47°31.70' N. lat., 124°37.03' W. long.;
- (15) 47°25.67' N. lat., 124°34.79' W. long.;
- (16) 47°12.82' N. lat., 124°29.12' W. long.;
- (17) 46°52.94' N. lat., 124°22.58' W. long.;
- (18) 46°44.18' N. lat., 124°18.00' W. long.;
- (19) 46°38.17' N. lat., 124°15.88' W. long.;
- (20) 46°29.53' N. lat., 124°15.89' W. long.;
- (21) 46°19.27' N. lat., 124°14.15' W. long.;
- (22) 46°16.00' N. lat., 124°13.04' W. long.;
- (23) 46°07.00' N. lat., 124°07.01' W. long.;
- (24) 45°55.95' N. lat., 124°02.23' W. long.;
- (25) 45°54.53' N. lat., 124°02.57' W. long.;
- (26) 45°50.65' N. lat., 124°01.62' W. long.;
- (27) 45°48.20' N. lat., 124°02.16' W. long.;
- (28) 45°46.00' N. lat., 124°01.86' W. long.;
- (29) 45°43.46' N. lat., 124°01.28' W. long.;
- (30) 45°40.48' N. lat., 124°01.03' W. long.;
- (31) 45°39.04' N. lat., 124°01.68' W. long.;
- (32) 45°35.48' N. lat., 124°01.90' W. long.;
- (33) 45°29.81' N. lat., 124°02.45' W. long.;
- (34) 45°27.97' N. lat., 124°01.90' W. long.;
- (35) 45°27.22' N. lat., 124°02.66' W. long.;
- (36) 45°24.20' N. lat., 124°02.94' W. long.;
- (37) 45°20.60' N. lat., 124°01.74' W. long.;
- (38) 45°20.25' N. lat., 124°01.85' W. long.;
- (39) 45°16.44' N. lat., 124°03.22' W. long.;
- (40) 45°13.63' N. lat., 124°02.69' W. long.;
- (41) 45°11.05' N. lat., 124°03.59' W. long.;
- (42) 45°08.55' N. lat., 124°03.47' W. long.;
- (43) 45°03.82' N. lat., 124°04.43' W. long.;
- (44) 45°02.81' N. lat., 124°04.64' W. long.;
- (45) 44°58.06' N. lat., 124°05.03' W. long.;
- (46) 44°53.97' N. lat., 124°06.92' W. long.;
- (47) 44°48.89' N. lat., 124°07.04' W. long.;
- (48) 44°46.94' N. lat., 124°08.25' W. long.;
- (49) 44°42.72' N. lat., 124°08.98' W. long.;
- (50) 44°38.16' N. lat., 124°11.48' W. long.;
- (51) 44°33.38' N. lat., 124°11.54' W. long.;
- (52) 44°28.51' N. lat., 124°12.04' W. long.;
- (53) 44°27.65' N. lat., 124°12.56' W. long.;
- (54) 44°19.67' N. lat., 124°12.37' W. long.;

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- (55) 44°10.79' N. lat., 124°12.22' W. long.;
  - (56) 44°09.22' N. lat., 124°12.28' W. long.;
  - (57) 44°08.30' N. lat., 124°12.30' W. long.;
  - (58) 44°00.22' N. lat., 124°12.80' W. long.;
  - (59) 43°51.56' N. lat., 124°13.18' W. long.;
  - (60) 43°44.26' N. lat., 124°14.50' W. long.;
  - (61) 43°33.82' N. lat., 124°16.28' W. long.;
  - (62) 43°28.66' N. lat., 124°18.72' W. long.;
  - (63) 43°23.12' N. lat., 124°24.04' W. long.;
  - (64) 43°20.83' N. lat., 124°25.67' W. long.;
  - (65) 43°20.48' N. lat., 124°25.90' W. long.;
  - (66) 43°16.41' N. lat., 124°27.52' W. long.;
  - (67) 43°14.23' N. lat., 124°29.28' W. long.;
  - (68) 43°14.03' N. lat., 124°28.31' W. long.;
  - (69) 43°11.92' N. lat., 124°28.26' W. long.;
  - (70) 43°11.02' N. lat., 124°29.11' W. long.;
  - (71) 43°10.13' N. lat., 124°29.15' W. long.;
  - (72) 43°09.26' N. lat., 124°31.03' W. long.;
  - (73) 43°07.73' N. lat., 124°30.92' W. long.;
  - (74) 43°05.93' N. lat., 124°29.64' W. long.;
  - (75) 43°01.59' N. lat., 124°30.64' W. long.;
  - (76) 42°59.72' N. lat., 124°31.16' W. long.;
  - (77) 42°53.75' N. lat., 124°36.09' W. long.;
  - (78) 42°50.00' N. lat., 124°36.41' W. long.;
  - (79) 42°50.00' N. lat., 124°38.39' W. long.;
  - (80) 42°49.37' N. lat., 124°38.81' W. long.;
  - (81) 42°46.42' N. lat., 124°37.69' W. long.;
  - (82) 42°46.07' N. lat., 124°38.56' W. long.;
  - (83) 42°45.29' N. lat., 124°37.95' W. long.;
  - (84) 42°45.61' N. lat., 124°36.87' W. long.;
  - (85) 42°44.27' N. lat., 124°33.64' W. long.;
  - (86) 42°42.75' N. lat., 124°31.84' W. long.;
  - (87) 42°40.50' N. lat., 124°29.67' W. long.;
  - (88) 42°40.04' N. lat., 124°29.20' W. long.;
  - (89) 42°38.09' N. lat., 124°28.39' W. long.;
  - (90) 42°36.73' N. lat., 124°27.54' W. long.;
  - (91) 42°36.56' N. lat., 124°28.40' W. long.;
  - (92) 42°35.77' N. lat., 124°28.79' W. long.;
  - (93) 42°34.03' N. lat., 124°29.98' W. long.;
  - (94) 42°34.19' N. lat., 124°30.58' W. long.;
  - (95) 42°31.27' N. lat., 124°32.24' W. long.;
  - (96) 42°27.07' N. lat., 124°32.53' W. long.;
  - (97) 42°24.21' N. lat., 124°31.23' W. long.;
  - (98) 42°20.47' N. lat., 124°28.87' W. long.;
  - (99) 42°14.60' N. lat., 124°26.80' W. long.;
  - (100) 42°13.67' N. lat., 124°26.25' W. long.;
  - (101) 42°10.90' N. lat., 124°24.56' W. long.;
  - (102) 42°07.04' N. lat., 124°23.35' W. long.;
  - (103) 42°02.16' N. lat., 124°22.59' W. long.;
  - (104) 42°00.00' N. lat., 124°21.81' W. long.;
  - (105) 41°55.75' N. lat., 124°20.72' W. long.;
  - (106) 41°50.93' N. lat., 124°23.76' W. long.;
  - (107) 41°42.53' N. lat., 124°16.47' W. long.;
  - (108) 41°37.20' N. lat., 124°17.05' W. long.;
  - (109) 41°24.58' N. lat., 124°10.51' W. long.;
  - (110) 41°20.73' N. lat., 124°11.73' W. long.;
  - (111) 41°17.59' N. lat., 124°10.66' W. long.;
  - (112) 41°04.54' N. lat., 124°14.47' W. long.;
  - (113) 40°54.26' N. lat., 124°13.90' W. long.;
  - (114) 40°40.31' N. lat., 124°26.24' W. long.;
  - (115) 40°34.00' N. lat., 124°27.39' W. long.;
  - (116) 40°30.00' N. lat., 124°31.32' W. long.;
  - (117) 40°28.89' N. lat., 124°32.43' W. long.;
  - (118) 40°24.77' N. lat., 124°29.51' W. long.;
  - (119) 40°22.47' N. lat., 124°24.12' W. long.;
  - (120) 40°19.73' N. lat., 124°23.59' W. long.;
  - (121) 40°18.64' N. lat., 124°21.89' W. long.;
  - (122) 40°17.67' N. lat., 124°23.07' W. long.;
  - (123) 40°15.58' N. lat., 124°23.61' W. long.;
  - (124) 40°13.42' N. lat., 124°22.94' W. long.;
  - (125) 40°10.00' N. lat., 124°16.65' W. long.;
- (g) The 100-fm (183-m) depth contour used between the U.S. border with Canada and 40°10.00' N. lat. is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°15.00' N. lat., 125°41.00' W. long.;
  - (2) 48°14.00' N. lat., 125°36.00' W. long.;
  - (3) 48°09.50' N. lat., 125°40.50' W. long.;
  - (4) 48°08.00' N. lat., 125°38.00' W. long.;
  - (5) 48°05.00' N. lat., 125°37.25' W. long.;
  - (6) 48°02.60' N. lat., 125°34.70' W. long.;
  - (7) 47°59.00' N. lat., 125°34.00' W. long.;
  - (8) 47°57.26' N. lat., 125°29.82' W. long.;
  - (9) 47°59.87' N. lat., 125°25.81' W. long.;
  - (10) 48°01.80' N. lat., 125°24.53' W. long.;
  - (11) 48°02.08' N. lat., 125°22.98' W. long.;
  - (12) 48°02.97' N. lat., 125°22.89' W. long.;
  - (13) 48°04.47' N. lat., 125°21.75' W. long.;
  - (14) 48°06.11' N. lat., 125°19.33' W. long.;
  - (15) 48°07.95' N. lat., 125°18.55' W. long.;
  - (16) 48°09.00' N. lat., 125°18.00' W. long.;

- (17) 48°11.31' N. lat., 125°17.55' W. long.;  
 (18) 48°14.60' N. lat., 125°13.46' W. long.;  
 (19) 48°16.67' N. lat., 125°14.34' W. long.;  
 (20) 48°18.73' N. lat., 125°14.41' W. long.;  
 (21) 48°19.67' N. lat., 125°13.70' W. long.;  
 (22) 48°19.70' N. lat., 125°11.13' W. long.;  
 (23) 48°22.95' N. lat., 125°10.79' W. long.;  
 (24) 48°21.61' N. lat., 125°02.54' W. long.;  
 (25) 48°23.00' N. lat., 124°49.34' W. long.;  
 (26) 48°17.00' N. lat., 124°56.50' W. long.;  
 (27) 48°06.00' N. lat., 125°00.00' W. long.;  
 (28) 48°04.62' N. lat., 125°01.73' W. long.;  
 (29) 48°04.84' N. lat., 125°04.03' W. long.;  
 (30) 48°06.41' N. lat., 125°06.51' W. long.;  
 (31) 48°06.00' N. lat., 125°08.00' W. long.;  
 (32) 48°07.08' N. lat., 125°09.34' W. long.;  
 (33) 48°07.28' N. lat., 125°11.14' W. long.;  
 (34) 48°03.45' N. lat., 125°16.66' W. long.;  
 (35) 48°02.35' N. lat., 125°17.30' W. long.;  
 (36) 48°02.35' N. lat., 125°18.07' W. long.;  
 (37) 48°00.00' N. lat., 125°19.30' W. long.;  
 (38) 47°59.50' N. lat., 125°18.88' W. long.;  
 (39) 47°58.68' N. lat., 125°16.19' W. long.;  
 (40) 47°56.62' N. lat., 125°13.50' W. long.;  
 (41) 47°53.71' N. lat., 125°11.96' W. long.;  
 (42) 47°51.70' N. lat., 125°09.38' W. long.;  
 (43) 47°49.95' N. lat., 125°06.07' W. long.;  
 (44) 47°49.00' N. lat., 125°03.00' W. long.;  
 (45) 47°46.95' N. lat., 125°04.00' W. long.;  
 (46) 47°46.58' N. lat., 125°03.15' W. long.;  
 (47) 47°44.07' N. lat., 125°04.28' W. long.;  
 (48) 47°43.32' N. lat., 125°04.41' W. long.;  
 (49) 47°40.95' N. lat., 125°04.14' W. long.;  
 (50) 47°39.58' N. lat., 125°04.97' W. long.;  
 (51) 47°36.23' N. lat., 125°02.77' W. long.;  
 (52) 47°34.28' N. lat., 124°58.66' W. long.;  
 (53) 47°32.17' N. lat., 124°57.77' W. long.;  
 (54) 47°30.27' N. lat., 124°56.16' W. long.;  
 (55) 47°30.60' N. lat., 124°54.80' W. long.;  
 (56) 47°29.26' N. lat., 124°52.21' W. long.;  
 (57) 47°28.21' N. lat., 124°50.65' W. long.;  
 (58) 47°27.38' N. lat., 124°49.34' W. long.;  
 (59) 47°25.61' N. lat., 124°48.26' W. long.;  
 (60) 47°23.54' N. lat., 124°46.42' W. long.;  
 (61) 47°20.64' N. lat., 124°45.91' W. long.;  
 (62) 47°17.99' N. lat., 124°45.59' W. long.;  
 (63) 47°18.20' N. lat., 124°49.12' W. long.;  
 (64) 47°15.01' N. lat., 124°51.09' W. long.;  
 (65) 47°12.61' N. lat., 124°54.89' W. long.;  
 (66) 47°08.22' N. lat., 124°56.53' W. long.;  
 (67) 47°08.50' N. lat., 124°57.74' W. long.;  
 (68) 47°01.92' N. lat., 124°54.95' W. long.;  
 (69) 47°01.08' N. lat., 124°59.22' W. long.;  
 (70) 46°58.48' N. lat., 124°57.81' W. long.;  
 (71) 46°56.79' N. lat., 124°56.03' W. long.;  
 (72) 46°58.01' N. lat., 124°55.09' W. long.;  
 (73) 46°55.07' N. lat., 124°54.14' W. long.;  
 (74) 46°59.60' N. lat., 124°49.79' W. long.;  
 (75) 46°58.72' N. lat., 124°48.78' W. long.;  
 (76) 46°54.45' N. lat., 124°48.36' W. long.;  
 (77) 46°53.99' N. lat., 124°49.95' W. long.;  
 (78) 46°54.38' N. lat., 124°52.73' W. long.;  
 (79) 46°52.38' N. lat., 124°52.02' W. long.;  
 (80) 46°48.93' N. lat., 124°49.17' W. long.;  
 (81) 46°41.50' N. lat., 124°43.00' W. long.;  
 (82) 46°34.50' N. lat., 124°28.50' W. long.;  
 (83) 46°29.00' N. lat., 124°30.00' W. long.;  
 (84) 46°20.00' N. lat., 124°36.50' W. long.;  
 (85) 46°18.40' N. lat., 124°37.70' W. long.;  
 (86) 46°18.03' N. lat., 124°35.46' W. long.;  
 (87) 46°17.00' N. lat., 124°22.50' W. long.;  
 (88) 46°16.00' N. lat., 124°20.62' W. long.;  
 (89) 46°13.52' N. lat., 124°25.49' W. long.;  
 (90) 46°12.17' N. lat., 124°30.74' W. long.;  
 (91) 46°10.63' N. lat., 124°37.96' W. long.;  
 (92) 46°09.29' N. lat., 124°39.01' W. long.;  
 (93) 46°02.40' N. lat., 124°40.37' W. long.;  
 (94) 45°56.45' N. lat., 124°38.00' W. long.;  
 (95) 45°51.92' N. lat., 124°38.50' W. long.;  
 (96) 45°47.20' N. lat., 124°35.58' W. long.;  
 (97) 45°46.40' N. lat., 124°32.36' W. long.;  
 (98) 45°46.00' N. lat., 124°32.10' W. long.;  
 (99) 45°41.75' N. lat., 124°28.12' W. long.;  
 (100) 45°36.95' N. lat., 124°24.47' W. long.;  
 (101) 45°31.84' N. lat., 124°22.04' W. long.;  
 (102) 45°27.10' N. lat., 124°21.74' W. long.;  
 (103) 45°20.25' N. lat., 124°18.54' W. long.;  
 (104) 45°18.14' N. lat., 124°17.59' W. long.;  
 (105) 45°11.08' N. lat., 124°16.97' W. long.;  
 (106) 45°04.39' N. lat., 124°18.35' W. long.;  
 (107) 45°03.83' N. lat., 124°18.60' W. long.;  
 (108) 44°58.05' N. lat., 124°21.58' W. long.;  
 (109) 44°47.67' N. lat., 124°31.41' W. long.;  
 (110) 44°44.54' N. lat., 124°33.58' W. long.;  
 (111) 44°39.88' N. lat., 124°35.00' W. long.;  
 (112) 44°32.90' N. lat., 124°36.81' W. long.;  
 (113) 44°30.34' N. lat., 124°38.56' W. long.;  
 (114) 44°30.04' N. lat., 124°42.31' W. long.;  
 (115) 44°26.84' N. lat., 124°44.91' W. long.;  
 (116) 44°17.99' N. lat., 124°51.04' W. long.;  
 (117) 44°12.92' N. lat., 124°56.28' W. long.;

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- (118) 44°00.14' N. lat., 124°55.25' W. long.;
- (119) 43°57.68' N. lat., 124°55.48' W. long.;
- (120) 43°56.66' N. lat., 124°55.45' W. long.;
- (121) 43°56.47' N. lat., 124°34.61' W. long.;
- (122) 43°42.73' N. lat., 124°32.41' W. long.;
- (123) 43°30.92' N. lat., 124°34.43' W. long.;
- (124) 43°20.83' N. lat., 124°39.39' W. long.;
- (125) 43°17.45' N. lat., 124°41.16' W. long.;
- (126) 43°07.04' N. lat., 124°41.25' W. long.;
- (127) 43°03.45' N. lat., 124°44.36' W. long.;
- (128) 43°03.91' N. lat., 124°50.81' W. long.;
- (129) 42°55.70' N. lat., 124°52.79' W. long.;
- (130) 42°54.12' N. lat., 124°47.36' W. long.;
- (131) 42°50.00' N. lat., 124°45.33' W. long.;
- (132) 42°44.00' N. lat., 124°42.38' W. long.;
- (133) 42°40.50' N. lat., 124°41.71' W. long.;
- (134) 42°38.23' N. lat., 124°41.25' W. long.;
- (135) 42°33.02' N. lat., 124°42.38' W. long.;
- (136) 42°31.90' N. lat., 124°42.04' W. long.;
- (137) 42°30.08' N. lat., 124°42.67' W. long.;
- (138) 42°28.28' N. lat., 124°47.08' W. long.;
- (139) 42°25.22' N. lat., 124°43.51' W. long.;
- (140) 42°19.23' N. lat., 124°37.91' W. long.;
- (141) 42°16.29' N. lat., 124°36.11' W. long.;
- (142) 42°13.67' N. lat., 124°35.81' W. long.;
- (143) 42°05.66' N. lat., 124°34.92' W. long.;
- (144) 42°00.00' N. lat., 124°35.27' W. long.;
- (145) 41°47.04' N. lat., 124°27.64' W. long.;
- (146) 41°32.92' N. lat., 124°28.79' W. long.;
- (147) 41°24.17' N. lat., 124°28.46' W. long.;
- (148) 41°10.12' N. lat., 124°20.50' W. long.;
- (149) 40°51.41' N. lat., 124°24.38' W. long.;
- (150) 40°43.71' N. lat., 124°29.89' W. long.;
- (151) 40°40.14' N. lat., 124°30.90' W. long.;
- (152) 40°37.35' N. lat., 124°29.05' W. long.;
- (153) 40°34.76' N. lat., 124°29.82' W. long.;
- (154) 40°36.78' N. lat., 124°37.06' W. long.;
- (155) 40°32.44' N. lat., 124°39.58' W. long.;
- (156) 40°30.00' N. lat., 124°38.13' W. long.;
- (157) 40°24.82' N. lat., 124°35.12' W. long.;
- (158) 40°23.30' N. lat., 124°31.60' W. long.;
- (159) 40°23.52' N. lat., 124°28.78' W. long.;
- (160) 40°22.43' N. lat., 124°25.00' W. long.;
- (161) 40°21.72' N. lat., 124°24.94' W. long.;
- (162) 40°21.87' N. lat., 124°27.96' W. long.;
- (163) 40°21.40' N. lat., 124°28.74' W. long.;
- (164) 40°19.68' N. lat., 124°28.49' W. long.;
- (165) 40°17.73' N. lat., 124°25.43' W. long.;
- (166) 40°18.37' N. lat., 124°23.35' W. long.;
- (167) 40°15.75' N. lat., 124°26.05' W. long.;
- (168) 40°16.75' N. lat., 124°33.71' W. long.;
- (169) 40°16.29' N. lat., 124°34.36' W. long.; and
- (170) 40°10.00' N. lat., 124°21.12' W. long.

[61 FR 35550, July 5, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 300.63, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

**§ 300.64 Fishing by U.S. treaty Indian tribes.**

(a) Halibut fishing in subarea 2A-1 by members of U.S. treaty Indian tribes



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located in the State of Washington is governed by this section.

(b) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear in conformance with the season and quota established annually by the Commission.

(c) Commercial fishing periods and management measures to implement paragraph (b) of this section will be established by treaty Indian tribal regulations.

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission's management measures governing size limits, careful release of halibut, logs, receipt and possession, and fishing gear (published pursuant to §300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(e) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 to December 31.

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (b) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) Any member of a U.S. treaty Indian tribe who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington* 384 F. Supp. 312 (W.D. Wash., 1974).

(i) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

| Tribe                       | Boundaries                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| HOH .....                   | Between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River), and east of 125°44'00" W. long.                                                                                                                                                                                                                                                                                                                                                                                            |
| JAMESTOWN S'KLALLAM .....   | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.                                                                                                                       |
| LOWER ELWHA S'KLALLAM ..... | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.                                                                                      |
| LUMMI .....                 | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States. |
| MAKAH .....                 | North of 48°02'15" N. lat. (Norwegian Memorial), west of 123°42'30" W. long., and east of 125°44'00" W. long.                                                                                                                                                                                                                                                                                                                                                                                                   |
| NOOKSACK .....              | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.                                                                                                                                  |
| PORT GAMBLE S'KLALLAM ..... | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.                                                                                                                     |
| QUILEUTE .....              | Between 48°07'36" N. lat. (Sand Point) and 47°31'42" N. lat. (Queets River), and east of 125°44'00" W. long.                                                                                                                                                                                                                                                                                                                                                                                                    |
| QUINAULT .....              | Between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis), and east of 125°44'00" W. long.                                                                                                                                                                                                                                                                                                                                                                                          |

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| Tribe           | Boundaries                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SKOKOMISH ..... | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.     |
| SUQUAMISH ..... | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.    |
| SWINOMISH ..... | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.    |
| TULALIP .....   | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States. |

[61 FR 35550, July 5, 1996, as amended at 74 FR 11697, Mar. 19, 2009; 76 FR 14319, Mar. 16, 2011]

### § 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual TAC among area 4 subareas and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

(c) *Guideline harvest level.* (1) The annual GHLs for Regulatory Areas 2C and 3A are determined as follows:

| If the Annual Total Constant Exploitation Yield for Halibut is More Than: | Then the GHL will be:      |
|---------------------------------------------------------------------------|----------------------------|
| (i) Regulatory Area 2C                                                    |                            |
| (A) 9,027,000 lb<br>(4,094.6 mt)                                          | 1,432,000 lb<br>(649.5 mt) |
| (B) 7,965,000 lb<br>(3,612.9 mt)                                          | 1,217,000 lb<br>(552.0 mt) |
| (C) 6,903,000 lb<br>(3,131.1 mt)                                          | 1,074,000 lb<br>(487.2 mt) |
| (D) 5,841,000 lb<br>(2,649.4 mt)                                          | 931,000 lb<br>(422.3 mt)   |
| (E) 4,779,000 lb<br>(2,167.7 mt)                                          | 788,000 lb<br>(357.4 mt)   |

| If the Annual Total Constant Exploitation Yield for Halibut is More Than: | Then the GHL will be:        |
|---------------------------------------------------------------------------|------------------------------|
| (ii) Regulatory Area 3A                                                   |                              |
| (A) 21,581,000 lb<br>(9,789.0 mt)                                         | 3,650,000 lb<br>(1,655.6 mt) |
| (B) 19,042,000 lb<br>(8,637.3 mt)                                         | 3,103,000 lb<br>(1,407.5 mt) |
| (C) 16,504,000 lb<br>(7,486.1 mt)                                         | 2,734,000 lb<br>(1,240.1 mt) |
| (D) 13,964,000 lb<br>(6,334.0 mt)                                         | 2,373,000 lb<br>(1,076.4 mt) |
| (E) 11,425,000 lb<br>(5,182.3 mt)                                         | 2,008,000 lb<br>(910.8 mt)   |

(2) NMFS will publish a notice in the FEDERAL REGISTER on an annual basis announcing the GHL based on the table in paragraph (c)(1) of this section for Area 2C and Area 3A for that calendar year after the IPHC establishes the constant exploitation yield for that year.

(3) The announced GHLs for Area 2C and 3A are intended to be the benchmarks for charter halibut harvest in those areas for the year in which it is announced pursuant to paragraph (c)(2) of this section. NMFS may take action at any time to limit the charter halibut harvest to as close to the GHL as practicable.

(d) *Charter vessels in Area 2C and Area 3A—(1) General requirements—(i) Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before

December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The employer of the charter vessel guide is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(iii) If halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet must be completed and submitted for each IPHC regulatory area to record the halibut caught and retained within that IPHC regulatory area. The completed logbook sheets for each IPHC regulatory area must indicate the primary statistical area in which the halibut were caught and retained.

(2) *Charter vessels in Area 2C*—(i) *Daily bag limit*. The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

(ii) *Charter vessel guide and crew restriction*. A charter vessel guide, a charter vessel operator, and any crew member of a charter vessel must not catch and retain halibut during a charter fishing trip.

(iii) *Line limit*. The number of lines used to fish for halibut onboard a vessel must not exceed six or the number of charter vessel anglers, whichever is less.

(iv) *Recordkeeping and reporting requirements in Area 2C*. Each charter vessel angler and charter vessel guide onboard a vessel in Area 2C must comply

with the following recordkeeping and reporting requirements (*see* paragraphs (d)(2)(iv)(A) and (B) of this section) by the end of the day or by the end of the charter vessel fishing trip, whichever comes first:

(A) *Charter vessel angler signature requirement*. Each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line number that corresponds to the angler's information.

(B) *Charter vessel guide requirements*. If halibut were caught and retained in Area 2C, the charter vessel guide must record the following information (*see* paragraphs (d)(2)(iv)(B)(1) through (6) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

(1) *Guide license number*. The Alaska Department of Fish and Game sport fishing guide license number held by charter vessel guide who certified the logbook data sheet.

(2) *Date*. Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip.

(3) *Angler sport fishing license number and printed name*. Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler onboard that will fish for halibut. Record the name of each angler not required to have an Alaska Sport Fishing License or its equivalent.

(4) *Number of halibut retained*. For each charter vessel angler, record the number of halibut caught and retained.

(5) *Signature*. Acknowledge that the recorded information is correct by signing the logbook data sheet.

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(6) *Angler signature.* The charter vessel guide is responsible for ensuring that charter vessel anglers comply with the signature requirements at paragraph (d)(2)(iv)(A) of this section.

(e) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (See Figure 1 to subpart E):

(i) With respect to paragraph (e)(2) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) By a line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 56°59'54" N. lat., 135°51'27" W. long. to Vasilief Rock at 56°48'56" N. lat., 135°32'30" W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(ii) With respect to paragraphs (e)(3), (e)(4), and (e)(5) of this section, that part of the Commission Regulatory Area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) A line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59'23" N. lat., 135°49'34" W. long., to Hanus Point at 56°51'55" N. lat., 135°30'30" W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with

setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (e)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel shall engage in sport fishing, as defined at §300.61, for halibut within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at §300.61, for other species, within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (e)(4) and (e)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in §300.61, for other species within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(5) Setline gear may not be used in a 4 nm radius extending south from Low Island at 57°00.70' N. lat., 135°36.57' W. long. within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(f) Sitka Pinnacles Marine Reserve. (1) For purposes of this paragraph (f), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5'N lat., 135°54.0'W long;  
56°57.0'N lat., 135°54.0'W long;  
56°57.0'N lat., 135°57.0'W long;  
56°55.5'N lat., 135°57.0'W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as

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defined at §300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(g) *Subsistence fishing in and off Alaska*. No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (g)(1), (g)(2), or (g)(3) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

### HALIBUT REGULATORY AREA 2C

| Rural Community       | Organized Entity        |
|-----------------------|-------------------------|
| Angoon .....          | Municipality            |
| Coffman Cove .....    | Municipality            |
| Craig .....           | Municipality            |
| Edna Bay .....        | Census Designated Place |
| Elfin Cove .....      | Census Designated Place |
| Gustavus .....        | Census Designated Place |
| Haines .....          | Municipality            |
| Hollis .....          | Census Designated Place |
| Hoonah .....          | Municipality            |
| Hydaburg .....        | Municipality            |
| Hyder .....           | Census Designated Place |
| Kake .....            | Municipality            |
| Kasaan .....          | Municipality            |
| Klawock .....         | Municipality            |
| Klukwan .....         | Census Designated Place |
| Metlakatla .....      | Census Designated Place |
| Meyers Chuck .....    | Census Designated Place |
| Naukat .....          | Municipality            |
| Pelican .....         | Municipality            |
| Petersburg .....      | Municipality            |
| Point Baker .....     | Census Designated Place |
| Port Alexander .....  | Municipality            |
| Port Protection ..... | Census Designated Place |
| Saxman .....          | Municipality            |
| Sitka .....           | Municipality            |
| Skagway .....         | Municipality            |
| Tenakee Springs ..... | Municipality            |
| Thorne Bay .....      | Municipality            |
| Whale Pass .....      | Census Designated Place |
| Wrangell .....        | Municipality            |

### HALIBUT REGULATORY AREA 3A

| Rural Community   | Organized Entity        |
|-------------------|-------------------------|
| Akhik .....       | Municipality            |
| Chenega Bay ..... | Census Designated Place |
| Cordova .....     | Municipality            |
| Karluk .....      | Census Designated Place |
| Kodiak City ..... | Municipality            |
| Larsen Bay .....  | Municipality            |
| Nanwalek .....    | Census Designated Place |
| Old Harbor .....  | Municipality            |
| Ouzinkie .....    | Municipality            |
| Port Graham ..... | Census Designated Place |
| Port Lions .....  | Municipality            |
| Seldovia .....    | Municipality            |
| Tatitlek .....    | Census Designated Place |
| Yakutat .....     | Municipality            |

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### HALIBUT REGULATORY AREA 3B

| Rural Community      | Organized Entity        |
|----------------------|-------------------------|
| Chignik Bay .....    | Municipality            |
| Chignik Lagoon ..... | Census Designated Place |
| Chignik Lake .....   | Census Designated Place |
| Cold Bay .....       | Municipality            |
| False Pass .....     | Municipality            |
| Ivanof Bay .....     | Census Designated Place |
| King Cove .....      | Municipality            |
| Nelson Lagoon .....  | Census Designated Place |
| Perryville .....     | Census Designated Place |
| Sand Point .....     | Municipality            |

### HALIBUT REGULATORY AREA 4A

| Rural Community | Organized Entity        |
|-----------------|-------------------------|
| Akutan .....    | Municipality            |
| Nikolski .....  | Census Designated Place |
| Unalaska .....  | Municipality            |

### HALIBUT REGULATORY AREA 4B

| Rural Community | Organized Entity        |
|-----------------|-------------------------|
| Adak .....      | Census Designated Place |
| Atka .....      | Municipality            |

### HALIBUT REGULATORY AREA 4C

| Rural Community  | Organized Entity |
|------------------|------------------|
| St. George ..... | Municipality     |
| St. Paul .....   | Municipality     |

### HALIBUT REGULATORY AREA 4D

| Rural Community       | Organized Entity |
|-----------------------|------------------|
| Gambell .....         | Municipality     |
| Savoonga .....        | Municipality     |
| Diomed (Inalik) ..... | Municipality     |

### HALIBUT REGULATORY AREA 4E

| Rural Community      | Organized Entity        |
|----------------------|-------------------------|
| Alakanuk .....       | Municipality            |
| Aleknegik .....      | Municipality            |
| Bethel .....         | Municipality            |
| Brevig Mission ..... | Municipality            |
| Chefornak .....      | Municipality            |
| Chevak .....         | Municipality            |
| Clark's Point .....  | Municipality            |
| Council .....        | Census Designated Place |
| Dillingham .....     | Municipality            |
| Eek .....            | Municipality            |
| Egegik .....         | Municipality            |
| Elim .....           | Municipality            |
| Emmonak .....        | Municipality            |
| Golovin .....        | Municipality            |
| Goodnews Bay .....   | Municipality            |
| Hooper Bay .....     | Municipality            |
| King Salmon .....    | Census Designated Place |
| Kipnuk .....         | Census Designated Place |
| Kongiganak .....     | Census Designated Place |
| Kotlik .....         | Municipality            |
| Koyuk .....          | Municipality            |
| Kwigillingok .....   | Census Designated Place |
| Levelock .....       | Census Designated Place |

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### HALIBUT REGULATORY AREA 4E—Continued

| Rural Community                     | Organized Entity        |
|-------------------------------------|-------------------------|
| Manokotak .....                     | Municipality            |
| Mekoryak .....                      | Municipality            |
| Naknek .....                        | Census Designated Place |
| Napaklak .....                      | Municipality            |
| Napaskiak .....                     | Municipality            |
| Newtok .....                        | Census Designated Place |
| Nightmute .....                     | Municipality            |
| Nome .....                          | Municipality            |
| Oscarville .....                    | Census Designated Place |
| Pilot Point .....                   | Municipality            |
| Platinum .....                      | Municipality            |
| Port Heiden .....                   | Municipality            |
| Quinhagak .....                     | Municipality            |
| Scammon Bay .....                   | Municipality            |
| Shaktolik .....                     | Municipality            |
| Sheldon Point (Nunam<br>Iqua) ..... | Municipality            |
| Shishmaref .....                    | Municipality            |
| Solomon .....                       | Census Designated Place |
| South Naknek .....                  | Census Designated Place |
| St. Michael .....                   | Municipality            |
| Stebbins .....                      | Municipality            |
| Teller .....                        | Municipality            |
| Togiak .....                        | Municipality            |
| Toksook Bay .....                   | Municipality            |
| Tuntutuliak .....                   | Census Designated Place |
| Tununak .....                       | Census Designated Place |
| Twin Hills .....                    | Census Designated Place |
| Ugashik .....                       | Census Designated Place |
| Unalakleet .....                    | Municipality            |
| Wales .....                         | Municipality            |
| White Mountain .....                | Municipality            |

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

### HALIBUT REGULATORY AREA 2C

| Place with Tribal Headquarters | Organized Tribal Entity                                                           |
|--------------------------------|-----------------------------------------------------------------------------------|
| Angoon .....                   | Angoon Community Association                                                      |
| Craig .....                    | Craig Community Association                                                       |
| Haines .....                   | Chilkoot Indian Association                                                       |
| Hoonah .....                   | Hoonah Indian Association                                                         |
| Hydaburg .....                 | Hydaburg Cooperative Association                                                  |
| Juneau .....                   | Aukquan Traditional Council<br>Central Council Tlingit and<br>Haida Indian Tribes |
| Kake .....                     | Douglas Indian Association                                                        |
| Kasaan .....                   | Organized Village of Kake                                                         |
| Ketchikan .....                | Organized Village of Kasaan                                                       |
| Klawock .....                  | Ketchikan Indian Corporation                                                      |
| .....                          | Klawock Cooperative Association                                                   |
| Klukwan .....                  | Chilkat Indian Village                                                            |
| Metlakatla .....               | Metlakatla Indian Community,<br>Annette Island Reserve                            |
| Petersburg .....               | Petersburg Indian Association                                                     |
| Saxman .....                   | Organized Village of Saxman                                                       |
| Sitka .....                    | Sitka Tribe of Alaska                                                             |
| Skagway .....                  | Skagway Village                                                                   |
| Wrangell .....                 | Wrangell Cooperative Association                                                  |

### HALIBUT REGULATORY AREA 3A

| Place with Tribal Headquarters | Organized Tribal Entity       |
|--------------------------------|-------------------------------|
| Akhiok .....                   | Native Village of Akhiok      |
| Chenega Bay .....              | Native Village of Chanega     |
| Cordova .....                  | Native Village of Eyak        |
| Karluk .....                   | Native Village of Karluk      |
| Kenai-Soldotna .....           | Kenaitze Indian Tribe         |
| .....                          | Village of Salamatoff         |
| Kodiak City .....              | Lesnoi Village (Woody Island) |
| .....                          | Native Village of Afognak     |
| .....                          | Shoonag' Tribe of Kodiak      |
| Larsen Bay .....               | Native Village of Larsen Bay  |
| Nanwalek .....                 | Native Village of Nanwalek    |
| Ninilchik .....                | Ninilchik Village             |
| Old Harbor .....               | Village of Old Harbor         |
| Ouzinkie .....                 | Native Village of Ouzinkie    |
| Port Graham .....              | Native Village of Port Graham |
| Port Lions .....               | Native Village of Port Lions  |
| Seldovia .....                 | Seldovia Village Tribe        |
| Tatitlek .....                 | Native Village of Tatitlek    |
| Wasilla .....                  | Village of Kanatak            |
| Yakutat .....                  | Yakutat Tlingit Tribe         |

### HALIBUT REGULATORY AREA 3B

| Place with Tribal Headquarters | Organized Tribal Entity                         |
|--------------------------------|-------------------------------------------------|
| Chignik Bay .....              | Native Village of Chignik                       |
| Chignik Lagoon .....           | Native Village of Chignik Lagoon                |
| Chignik Lake .....             | Chignik Lake Village                            |
| False Pass .....               | Native Village of False Pass                    |
| Ivanof Bay .....               | Ivanoff Bay Village                             |
| King Cove .....                | Agdaagux Tribe of King Cove                     |
| .....                          | Native Village of Belkofski                     |
| Nelson Lagoon .....            | Native Village of Nelson Lagoon                 |
| Perryville .....               | Native Village of Perryville                    |
| Sand Point .....               | Pauloff Harbor Village                          |
| .....                          | Native Village of Unga                          |
| .....                          | Qagan Tayagungin Tribe of<br>Sand Point Village |

### HALIBUT REGULATORY AREA 4A

| Place with Tribal Headquarters | Organized Tribal Entity      |
|--------------------------------|------------------------------|
| Akutan .....                   | Native Village of Akutan     |
| Nikolski .....                 | Native Village of Nikolski   |
| Unalaska .....                 | Qawalingin Tribe of Unalaska |

### HALIBUT REGULATORY AREA 4B

| Place with Tribal Headquarters | Organized Tribal Entity |
|--------------------------------|-------------------------|
| Atka .....                     | Native Village of Atka  |

### HALIBUT REGULATORY AREA 4C

| Place with Tribal Headquarters | Organized Tribal Entity                                                     |
|--------------------------------|-----------------------------------------------------------------------------|
| St. George .....               | Pribilof Islands Aleut Communities of St. Paul Island and St. George Island |
| St. Paul .....                 | .....                                                                       |

HALIBUT REGULATORY AREA 4D

| Place with Tribal Head-quarters | Organized Tribal Entity            |
|---------------------------------|------------------------------------|
| Gambell .....                   | Native Village of Gambell          |
| Savoonga .....                  | Native Village of Savoonga         |
| Diomede (Inalik) .....          | Native Village of Diomede (Inalik) |

HALIBUT REGULATORY AREA 4E

| Place with Tribal Head-quarters  | Organized Tribal Entity           |
|----------------------------------|-----------------------------------|
| Alakanuk .....                   | Village of Alakanuk               |
| Aleknagik .....                  | Native Village of Aleknagik       |
| Bethel .....                     | Orutsarmuit Native Village        |
| Brevig Mission .....             | Native Village of Brevig Mission  |
| Chefornak .....                  | Village of Chefornak              |
| Chevak .....                     | Chevak Native Village             |
| Clark's Point .....              | Village of Clark's Point          |
| Council .....                    | Native Village of Council         |
| Dillingham .....                 | Native Village of Dillingham      |
|                                  | Native Village of Eku             |
|                                  | Native Village of Kanakanak       |
| Eek .....                        | Native Village of Eek             |
| Egegik .....                     | Egegik Village                    |
| Elim .....                       | Native Village of Elim            |
| Emmonak .....                    | Chuloonawick Native Village       |
|                                  | Emmonak Village                   |
| Golovin .....                    | Chinik Eskimo Community           |
| Goodnews Bay .....               | Native Village of Goodnews Bay    |
| Hooper Bay .....                 | Native Village of Hooper Bay      |
|                                  | Native Village of Paimiut         |
| King Salmon .....                | King Salmon Tribal Council        |
| Kipnuk .....                     | Native Village of Kipnuk          |
| Kongiganak .....                 | Native Village of Kongiganak      |
| Kotlik .....                     | Native Village of Hamilton        |
|                                  | Village of Bill Moore's Slough    |
|                                  | Village of Kotlik                 |
| Koyuk .....                      | Native Village of Koyuk           |
| Kwigillingok .....               | Native Village of Kwigillingok    |
| Levelock .....                   | Levelock Village                  |
| Manokotak .....                  | Manokotak Village                 |
| Mekoryak .....                   | Native Village of Mekoryak        |
| Naknek .....                     | Naknek Native Village             |
| Napakiak .....                   | Native Village of Napakiak        |
| Napaskiak .....                  | Native Village of Napaskiak       |
| Newtok .....                     | Newtok Village                    |
| Nightmute .....                  | Native Village of Nightmute       |
|                                  | Umkumiute Native Village          |
| Nome .....                       | King Island Native Community      |
|                                  | Nome Eskimo Community             |
| Oscarville .....                 | Oscarville Traditional Village    |
| Pilot Point .....                | Native Village of Pilot Point     |
| Platinum .....                   | Platinum Traditional Village      |
| Port Heiden .....                | Native Village of Port Heiden     |
| Quinhagak .....                  | Native Village of Kwinhagak       |
| Scammon Bay .....                | Native Village of Scammon Bay     |
| Shaktolik .....                  | Native Village of Shaktolik       |
| Sheldon Point (Nunam Iqua) ..... | Native Village of Sheldon's Point |
| Shishmaref .....                 | Native Village of Shishmaref      |
| Solomon .....                    | Village of Solomon                |
| South Naknek .....               | South Naknek Village              |
| St. Michael .....                | Native Village of Saint Michael   |
| Stebbins .....                   | Stebbins Community Association    |
| Teller .....                     | Native Village of Mary's Igloo    |
|                                  | Native Village of Teller          |
| Togiak .....                     | Traditional Village of Togiak     |
| Toksook Bay .....                | Native Village of Toksook Bay     |
| Tuntutuliak .....                | Native Village of Tuntutuliak     |
| Tununak .....                    | Native Village of Tununak         |
| Twin Hills .....                 | Twin Hills Village                |

HALIBUT REGULATORY AREA 4E—Continued

| Place with Tribal Head-quarters | Organized Tribal Entity          |
|---------------------------------|----------------------------------|
| Ugashik .....                   | Ugashik Village                  |
| Unalakleet .....                | Native Village of Unalakleet     |
| Wales .....                     | Native Village of Wales          |
| White Mountain .....            | Native Village of White Mountain |

(3) A person is eligible to harvest subsistence halibut if he or she is a rural resident in one of the rural areas of Alaska described as follows:

(i) Southeast Alaska east of 141° W. long., except for the land areas of the Ketchikan Gateway Borough as described at paragraph (g)(4)(i) of this section, the land areas of the City and Borough of Juneau, and the Ketchikan and Juneau non-subsistence marine waters areas as defined in paragraphs (h)(3)(i) and (h)(3)(ii) of this section (see figures 2 and 3 to this subpart E).

(ii) The Alaska Peninsula, Aleutian Islands, Kodiak Island Archipelago, and the area south of the northern boundary of the Bristol Bay Borough and south of 58°39.2' N. lat. (see figures 5, 6, and 7 to this subpart E).

(iii) Nelson, Nunivak, and Saint Lawrence Islands (see figure 6 to this subpart E).

(iv) All other areas of Alaska within ten statute miles of mean high water on the Bering Sea and Pacific Ocean coasts, south of Cape Espenberg, including along the Kuskokwim River to Bethel, and that are not specified as non-rural land or water areas as defined in paragraph (g)(4) of this section (see figures 4, 5, 6, and 7 to this subpart E).

(4) Non-rural areas consist of the non-subsistence marine waters areas defined in paragraph (h)(3) of this section and the land areas of the following cities and boroughs for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:

(i) The Ketchikan Gateway Borough on May 18, 2008. This area encompasses all those islands bounded on the east, north, and west by Behm Canal, Behm Narrows, and Clarence Strait to its junction with Nichols Passage, and on the south by Nichols and Revillagigedo Channel to its junction with Behm Canal. The designated boundaries extend to the center line of Behm Canal,

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Behm Narrows, Clarence Strait, Nichols Passage, and Revillagigedo Channel, and include all the area of Revillagigedo, Gravina, Pennock, Betton, Grant and other Clover Passage and Naha Bay Islands, Hassler, Gedney, Black, Smeaton, Manzanita, Rudyerd, and Bold Islands, and all other offshore and adjacent islands and inlets thereto (see figure 2 to this subpart E).

(ii) The City and Borough of Juneau (see figure 3 to this subpart E).

(iii) The Greater Anchorage Area Borough (see figures 4 and 5 to this subpart E).

(iv) The Matanuska-Susitna Borough (see figure 5 to this subpart E).

(v) The Kenai Peninsula Borough excluding the area of the Seldovia Census Designated Place, the area south and west of that place, and the area south and west of a line that runs from 59°27.5' N. lat., 151°31.7' W. long. to 59°12.5' N. lat., 151°18.5' W. long (see figure 5 to this subpart E).

(vi) The City of Valdez (see figures 4 and 5 to this subpart E).

(h) *Limitations on subsistence fishing.* Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (g) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (i) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear, including longline, handline, rod and reel, spear, jig and hand-troll gear.

(i) Subsistence fishing gear set or retrieved from a vessel while engaged in subsistence fishing for halibut must not have more than the allowable number of hooks per vessel, or per person registered in accordance with paragraph (i) of this section and aboard the vessel, whichever is less, according to the regulatory area and permit type indicated in the following table:

| Regulatory Area                                                                                   | Permit Type              | Gear Restrictions                                                     |
|---------------------------------------------------------------------------------------------------|--------------------------|-----------------------------------------------------------------------|
| 2C--Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas              | SHARC                    | 30 hooks per vessel                                                   |
|                                                                                                   | Ceremonial Permit        | 30 hooks per vessel                                                   |
|                                                                                                   | Educational Permit       | 30 hooks per vessel                                                   |
|                                                                                                   | Community Harvest Permit | 30 hooks per person onboard up to 90 hooks per vessel                 |
| 2C--Sitka Sound                                                                                   | SHARC                    | September 1 through May 31: 30 hooks per vessel                       |
|                                                                                                   |                          | June 1 through August 31: 15 hooks per vessel; no power hauling       |
|                                                                                                   | Ceremonial Permit        | September 1 through May 31: 30 hooks per vessel                       |
|                                                                                                   |                          | June 1 through August 31: fishing under Ceremonial Permit not allowed |
|                                                                                                   | Educational Permit       | 30 hooks per vessel                                                   |
|                                                                                                   | Community Harvest Permit | fishing under Community Harvest Permit not allowed                    |
| 2C--Ketchikan and Juneau non-subsistence marine waters areas                                      | SHARC                    | general subsistence halibut fishing not allowed                       |
|                                                                                                   | Ceremonial Permit        | 30 hooks per vessel                                                   |
|                                                                                                   | Educational Permit       | 30 hooks per vessel                                                   |
|                                                                                                   | Community Harvest Permit | fishing under Community Harvest Permit not allowed                    |
| 3A--Except Chiniak Bay, and Anchorage-Mat-Su-Kenai and Valdez non-subsistence marine waters areas | SHARC                    | 30 hooks per person onboard up to 90 hooks per vessel                 |



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| Regulatory Area                                                          | Permit Type              | Gear Restrictions                                     |
|--------------------------------------------------------------------------|--------------------------|-------------------------------------------------------|
|                                                                          | Ceremonial Permit        | 30 hooks per person onboard up to 90 hooks per vessel |
|                                                                          | Educational Permit       | 30 hooks per person onboard up to 90 hooks per vessel |
|                                                                          | Community Harvest Permit | 30 hooks per person onboard up to 90 hooks per vessel |
| 3A--Chiniak Bay                                                          | SHARC                    | 30 hooks per person onboard up to 60 hooks per vessel |
|                                                                          | Ceremonial Permit        | 30 hooks per person onboard up to 90 hooks per vessel |
|                                                                          | Educational Permit       | 30 hooks per person onboard up to 90 hooks per vessel |
|                                                                          | Community Harvest Permit | 30 hooks per person onboard up to 90 hooks per vessel |
| 3A--Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas | SHARC                    | general subsistence halibut fishing not allowed       |
|                                                                          | Ceremonial Permit        | 30 hooks per person onboard up to 90 hooks per vessel |
|                                                                          | Educational Permit       | 30 hooks per person onboard up to 90 hooks per vessel |
|                                                                          | Community Harvest Permit | fishing under Community Harvest Permit not allowed    |
| 3B                                                                       | SHARC                    | 30 hooks per person onboard up to 90 hooks per vessel |
| 4A and 4B                                                                | SHARC                    | 30 hooks per person onboard up to 90 hooks per vessel |
| 4C, 4D, and 4E                                                           | SHARC                    | no hook limit                                         |

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this section shall be marked with the following: first initial, last name, and address (street,

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city, and state), followed by the letter “S” to indicate that it is used to harvest subsistence halibut.

(iii) Markings on setline marker buoys shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The retention of subsistence halibut is limited per person eligible to conduct subsistence fishing for halibut and onboard the vessel according to the following table:

| Regulatory Area                                                                      | Permit Type              | Retention Limits                                                            |
|--------------------------------------------------------------------------------------|--------------------------|-----------------------------------------------------------------------------|
| 2C--Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas | SHARC                    | 20 halibut per day per vessel and in possession                             |
|                                                                                      | Ceremonial Permit        | 25 halibut per permit                                                       |
|                                                                                      | Educational Permit       | 25 halibut per permit                                                       |
|                                                                                      | Community Harvest Permit | no daily or possession limit                                                |
| 2C--Sitka Sound                                                                      | SHARC                    | September 1 through May 31: 10 halibut per day per vessel and in possession |
|                                                                                      |                          | June 1 through August 31: 5 halibut per day per vessel and in possession    |
|                                                                                      | Ceremonial Permit        | September 1 through May 31: 25 halibut per permit                           |
|                                                                                      |                          | June 1 through August 31: fishing under Ceremonial Permit not allowed       |
|                                                                                      | Educational Permit       | 25 halibut per permit                                                       |
|                                                                                      | Community Harvest Permit | fishing under Community Harvest Permit not allowed                          |
| 2C--Ketchikan and Juneau non-subsistence marine waters areas                         | SHARC                    | general subsistence halibut fishing not allowed                             |

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| Regulatory Area                                                                                               | Permit Type              | Retention Limits                                   |
|---------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------------------------------|
|                                                                                                               | Ceremonial Permit        | 25 halibut per permit                              |
|                                                                                                               | Educational Permit       | 25 halibut per permit                              |
|                                                                                                               | Community Harvest Permit | fishing under Community Harvest Permit not allowed |
| 3A--Including Chiniak Bay, but excluding Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas | SHARC                    | 20 halibut per person per day and in possession    |
|                                                                                                               | Ceremonial Permit        | 25 halibut per permit                              |
|                                                                                                               | Educational Permit       | 25 halibut per permit                              |
|                                                                                                               | Community Harvest Permit | no daily or possession limit                       |
| 3A--Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas                                      | SHARC                    | general subsistence halibut fishing not allowed    |
|                                                                                                               | Ceremonial Permit        | 25 halibut per permit                              |
|                                                                                                               | Educational Permit       | 25 halibut per permit                              |
|                                                                                                               | Community Harvest Permit | fishing under Community Harvest Permit not allowed |
| 3B                                                                                                            | SHARC                    | 20 halibut per person per day and in possession    |
| 4A and 4B                                                                                                     | SHARC                    | 20 halibut per person per day; no possession limit |
| 4C, 4D, and 4E                                                                                                | SHARC                    | no daily or possession limit                       |

(3) Subsistence fishing may be conducted in any waters in and off Alaska except in the four non-subsistence marine waters areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 2 to subpart E) is defined as those waters between a line from Caamano Point at 55°29.90' N. lat., 131°58.25' W. long. to Point Higgins at 55°27.42' N. lat., 131°50.00' W. long. and a point at 55°11.78' N. lat., 131°05.13' W. long., located on Point Sykes to a

point at 55°12.22' N. lat., 131°05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55°11.54' N. lat., 131°11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132°07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55°02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 3 to subpart E) is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57°50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Seginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58°43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58°03.42' N. lat.), and east of a line from Point Couverden at 58°11.38' N. lat., 135°03.40' W. long., to Point Augusta at 58°02.38' N. lat., 134°57.11' W. long.;

(iii) *The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A* (see figures 4, 5, 6, and 7 to this subpart E) is defined as:

(A) All waters of Cook Inlet north of a line extending from the westernmost point of Hesketh Island at 59°30.40' N. lat., except those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61°05.00' N. lat., 151°01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.) (Tyonek subdistrict); and

(B) All waters of Alaska south of 59°30.40' N. lat. on the western shore of Cook Inlet to Cape Douglas (58°51.10' N. lat.) and in the east to Cape Fairfield (148°50.25' W. long.), except those waters of Alaska west of a line from the easternmost point of Jakolof Bay (151°31.90' W. long.), and following the shore to a

line extending south from the easternmost point of Rocky Bay (151°18.41' W. long.); and

(iv) *Valdez non-subsistence marine waters area in Commission regulatory area 3A* (see figures 4 and 5 to this subpart E) is defined as the waters of Port Valdez and Valdez Arm located north of 61°01.38' N. lat., and east of 146°43.80' W. long.

(4) Waters in and off Alaska that are not specifically identified as non-subsistence marine waters areas in paragraph (h)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (i) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (g)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (g)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph (h)(4), “area of tribal membership” means rural areas of the Commission regulatory area under which the Organized Tribal Entity is listed in the tables set out in paragraph (g)(2) of this section, or the Bering Sea closed area adjacent to the rural area in which the Alaska Native tribal headquarters is located.

(i) *Subsistence registration.* A person must register as a subsistence halibut fisher and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who registers according to paragraph (i)(2) of this section and who is qualified to conduct subsistence fishing for

halibut according to paragraph (g) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section.

(2) *Registration.* To register as a subsistence halibut fisherman, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Application forms are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2. NMFS will process a SHARC Application for an Alaska Native Tribal Member or a SHARC Application for a Rural Resident provided that an application is completed, with all applicable fields accurately filled-in, and all required additional documentation is submitted. Initial applications for a SHARC must be signed and mailed or faxed to NMFS (see instructions on form). Renewals may be submitted electronically, mailed, or faxed.

(i) *Non-electronic submittal.* The applicant must sign and date the application certifying that all information is true, correct, and complete. The applicant must submit the paper application as indicated on the application.

(ii) *Electronic submittal.* An individual can submit a SHARC renewal on-line using an application available at the Alaska Region website. By using the SHARC number and date of birth, and by submitting the application form, the applicant certifies that all information is true, correct, and complete.

(3) *Expiration of registration.* Each subsistence halibut registration certificate will be valid only for the period of time specified on the certificate. A person eligible to harvest subsistence halibut under paragraph (g) of this section may renew his or her registration certificate that is expired or will expire within 3 months by following the procedures described in paragraph (i)(2) of

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this section. A subsistence halibut registration certificate will expire:

(i) 2 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (g)(1) of this section, and

(ii) 4 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (g)(2) of this section.

(j) *Community Harvest Permit (CHP)*. An Area 2C or Area 3A community or Alaska Native tribe listed in paragraphs (g)(1) or (g)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. The CHP consists of a harvest log and up to five laminated permit cards. A CHP is a permit subject to regulation under § 679.4(a) of this title.

(1) *Qualifications*. (i) NMFS may issue a CHP to any community or Alaska Native tribe that applies according to paragraph (j)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section.

(ii) NMFS will issue a CHP to a community in Area 2C or Area 3A only if:

(A) The applying community is listed as eligible in Area 2C or Area 3A according to paragraph (g)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (g)(2) of this section exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C or Area 3A only if the applying tribe is listed as eligible in Area 2C or Area 3A according to paragraph (g)(2) of this section.

(iv) Eligible communities or Alaska Native tribes may appoint only one CHP Coordinator per community or tribe.

(2) *Application*. A community or Alaska Native tribe may apply for a CHP by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. A complete application must include:

(i) The name of the community or Alaska Native tribe requesting the CHP;

(ii) The full name of the person who is designated as the CHP Coordinator for each community or Alaska Native tribe, the designated CHP Coordinator's mailing address (number and street, city, state, and zip code), community of residence (the rural community or residence from paragraph (g)(1) of this section) or the Alaska Native tribe if applicable (as indicated in paragraph (g)(2) of this section), and the daytime telephone number; and

(iii) Any previously issued CHP harvest logs.

(3) *Restrictions*. Subsistence fishing for halibut under a CHP shall be valid only:

(i) In Area 2C or Area 3A, except that a CHP may not be used:

(A) Within Sitka Sound as defined in paragraph (e)(1)(ii) of this section (see Figure 1 to this subpart E); or

(B) Within the Ketchikan, Juneau, Anchorage-Matsu-Kenai, and Valdez non-subsistence marine waters areas as defined in paragraph (h)(3) of this section (see figures 2, 3, 4, 5, 6, and 7 to this subpart E).

(ii) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) of this section for the same community or Alaska Native tribe listed on the CHP;

(iii) On a single vessel on which a CHP card is present; and

(iv) If subsistence fishing gear set or retrieved from a vessel on which the CHP card is present does not exceed the restrictions of paragraph (h) of this section.

(4) *Expiration of permit*. Each CHP will be valid only for the period of time specified on the permit. A CHP will expire one year from the date of issuance to a community or Alaska Native tribe eligible to harvest halibut under paragraph (g) of this section. A community or Alaska Native tribe eligible to harvest subsistence halibut under paragraph (g) of this section may renew its CHP that is expired or will expire within three months by following the procedures described in paragraph (j)(2) of this section.

(5) *Duties of the CHP coordinator.* Each CHP Coordinator must ensure:

(i) The designated harvesters who may fish under the CHP are identified on the Community Harvest Permit harvest log when the CHP is issued to the designated harvesters;

(ii) The CHP remains in the possession of the CHP Coordinator or other tribal or government authority when not in use and is issued to the designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the CHP are performed.

(6) *Harvest log submission.* Each Community Harvest Permit harvest log must be submitted to NMFS on or before the date of expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (j)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number, date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity (if appropriate); and

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period specified on the permit, and if so, the date harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(k) *Ceremonial Permit or Educational Permit.* An Area 2C or Area 3A Alaska Native tribe that is listed in paragraph (g)(2) of this section may apply for a Ceremonial or Educational Permit, allowing the tribe to harvest up to 25 halibut per permit issued. The Ceremonial and Educational Permits each consist of a harvest log and a single laminated permit card. Ceremonial and Educational Permits are permits subject to regulation under §679.4(a) of this title.

(1) *Qualifications.* (i) NMFS may issue a Ceremonial or Educational Permit to any Alaska Native tribe that completes an application according to paragraph (k)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (g)(2) of this section.

(ii) Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe.

(iii) Eligible educational programs may appoint only one authorized Instructor per Educational Permit.

(2) *Application.* An Alaska Native tribe may apply for a Ceremonial or Educational Permit by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

(i) A complete application must include:

(A) The name of the Alaska Native tribe requesting the Ceremonial or Educational Permit;

(B) The name of the person designated as the Ceremonial Permit Coordinator for each Alaska Native tribe or the name of the person designated as the Instructor for an Educational Permit, the Ceremonial Permit Coordinator or Instructor's mailing address (number and street, city, state, and zip code), and the daytime telephone number;

(C) Any previously issued Ceremonial Permit harvest logs from any expired Ceremonial Permit if applying for a Ceremonial Permit; and

(D) Any previously issued Educational Permit harvest logs from any expired Educational Permit if applying for an Educational Permit.

(ii) NMFS will issue a Ceremonial Permit for the harvest of halibut associated with traditional cultural events only if the application:

(A) Indicates the occasion of cultural or ceremonial significance; and

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iii) NMFS will issue an Educational Permit only if the application:

(A) Includes the name and address of the educational institution or organization;

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(B) Includes the instructor's name;  
(C) Demonstrates the enrollment of qualified students;

(D) Describes minimum attendance requirements of the educational program; and

(E) Describes standards for the successful completion of the educational program.

(3) *Restrictions.* Subsistence fishing for halibut under Ceremonial or Educational Permits shall be valid only:

(i) In Area 3A, except:

(A) In the Anchorage-Matsu-Kenai non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4, 5, 6, and 7 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

- (1) Kenaitze Indian Tribe;
- (2) Seldovia Village Tribe;
- (3) Ninilchik Village;
- (4) Native Village of Port Graham;
- (5) Native Village of Nanwalek; and
- (6) Village of Salamatoff.

(B) In the Valdez non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4 and 5 to this subpart E), only the Native Village of Tatitlek may use a Ceremonial or Educational permit.

(ii) In Area 2C, except:

(A) In the Ketchikan non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 2 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

(1) Central Council of Tlingit/Haida Indians;

(2) Ketchikan Indian Corporation; and

(3) Organized Village of Saxman;

(B) In the Juneau non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 3 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

(1) Central Council of Tlingit/Haida Indians;

(2) Douglas Indian Association; and

(3) Aukquan Traditional Council.

(C) A Ceremonial Permit may not be used within Sitka Sound from June 1 through August 31;

(iii) On a single vessel on which the Ceremonial or Educational Permit card is present;

(iv) On the vessel on which the instructor is present for Educational Permits;

(v) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) of this section for the same Alaska Native tribe listed on the Ceremonial or Educational Permit, except that students enrolled in an educational program may fish under an Educational Permit without a subsistence halibut registration certificate; and

(vi) If subsistence fishing gear set or retrieved from a vessel on which the Ceremonial or Educational Permit card is present does not exceed the restrictions of paragraph (h) of this section.

(4) *Expiration of permits.* Each Ceremonial or Educational Permit will be valid only for the period of time specified on the permit. Ceremonial and Educational Permits will expire 30 days from the date of issuance to an Alaska Native tribe eligible to harvest halibut under paragraph (g)(2) of this section. A tribe eligible to harvest subsistence halibut under paragraph (g)(2) of this section may apply for additional Ceremonial or Educational Permits at any time.

(5) *Duties of Ceremonial Permit Coordinators and Instructors.* Each Ceremonial Permit Coordinator or Instructor must ensure:

(i) The designated harvesters or students who may fish under the Ceremonial or Educational Permit are identified on the Ceremonial/Educational Permit harvest log when the permit is used;

(ii) The Ceremonial Permit remains in the possession of the Ceremonial Permit Coordinator or other tribal authority when not in use and is issued to designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the Ceremonial or Educational Permit are performed.

(6) *Harvest log submission.* Submission of a Ceremonial or Educational Permit log shall be required upon the expiration of each permit and must be received by Restricted Access Management within 15 days of the expiration by facsimile or mail. Harvest logs must

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be mailed to RAM at the address given in paragraph (k)(2) of this section or faxed to 907–586–7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number if applicable (students do not need a SHARC), date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity;

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period indicated on the permit, and if so, the date when harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(1) *Appeals.* If Restricted Access Management (RAM) determines that an application is deficient, it will prepare and send an Initial Administrative Determination (IAD) to the applicant. The IAD will indicate the deficiencies in the application or any additional provided information. An applicant who receives an IAD may appeal RAM's findings pursuant to § 679.43 of this title.

[68 FR 18156, Apr. 15, 2003]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 300.65, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 300.66 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under §§ 300.63, 300.65, and 300.67.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(e).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(f).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under § 300.65(g), possesses a valid subsistence halibut registration certificate pursuant to § 300.65(i), and makes this certificate available for inspection by an authorized officer on request, except that students enrolled in a valid educational program and fishing under an Educational Permit issued pursuant to § 300.65(k) do not need a subsistence halibut registration certificate.

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(h)(1) and retain more halibut than specified at 50 CFR 300.65(h)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-subsistence marine waters area specified at § 300.65(h)(3).

(h) Retain on board the harvesting vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or from sport fishing, as defined at § 300.61, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

(1) In Commission regulatory Areas 4D or 4E may retain, with harvests of Community Development Quota (CDQ) halibut, subsistence halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to § 300.62; or

(2) In Commission regulatory Areas 4C, 4D or 4E may retain, with harvests of CDQ halibut, subsistence halibut harvested in Commission regulatory areas 4C, 4D or 4E that are equal to or greater than the size limit specified in the annual management measures published pursuant to § 300.62.

(i) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as

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indicated on the State of Alaska vessel registration, or the owner's immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person's name pursuant to §300.65(i) and complies with the gear and harvest restrictions found at §300.65(h). For purposes of this paragraph (i), the term "charter vessel" means a vessel that is registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game.

(j) Retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under §300.65(g), and who holds a subsistence halibut registration certificate in the person's name under §300.65(i), may be reimbursed for the expense of fishing for subsistence halibut under the following conditions:

(1) Persons who qualify as rural residents under §300.65(g)(1) or (g)(3) and hold a SHARC in the person's name under §300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person's SHARC application; or

(2) Persons who qualify as Alaska Native tribal members under §300.65(g)(2) and hold a SHARC in the person's name under §300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by any Alaska Native tribe, or its members, or residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person's SHARC application.

(k) Retain subsistence halibut harvested under a CHP, Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

(l) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

(m) Exceed any of the harvest or gear limitations specified at §300.65(d).

(n) Transfer subsistence halibut to charter vessel anglers.

(o) Fail to comply with the requirements of §§300.65 and 300.67.

(p) Fail to submit or submit inaccurate information on any report, license, catch card, application, or statement required or submitted under §§300.65 and 300.67, or submit inaccurate information to an authorized officer.

(q) Refuse to present valid identification, U.S. Coast Guard operator's license, permit, license, or Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip logbook upon the request of an authorized officer.

(r) Be an operator of a vessel with one or more charter vessel anglers on board that are catching and retaining halibut without an original valid charter halibut permit for the regulatory area in which the vessel is operating.

(s) Be an operator of a vessel with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(t) Be an operator of a vessel with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(u) Be an operator of a vessel in Area 2C and Area 3A during one charter vessel fishing trip.

(v) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

(1) The person named on the charter halibut permit or permits being used on board the vessel;



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(2) The charter halibut permit or permits number(s) being used on board the vessel; and

(3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel.

[68 FR 18156, Apr. 15, 2003, as amended at 70 FR 16754, Apr. 1, 2005; 72 FR 30728, June 4, 2007; 72 FR 67669, Nov. 30, 2007; 73 FR 30524, May 28, 2008; 73 FR 52797, Sept. 11, 2008; 73 FR 54942, Sept. 24, 2008; 74 FR 21228, May 6, 2009; 74 FR 57110, Nov. 4, 2009; 75 FR 600, Jan. 5, 2010]

#### § 300.67 Charter halibut limited access program.

This section establishes limitations on using a vessel on which charter vessel anglers catch and retain Pacific halibut in International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A.

(a) *General permit requirements.* (1) In addition to other applicable permit and licensing requirements, any operator of a vessel with one or more charter vessel anglers catching and retaining Pacific halibut on board a vessel must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must insure that the operator of the permitted vessel complies with all requirements of §§ 300.65 and 300.67.

(2) *Area endorsement.* A charter halibut permit is valid only in the International Pacific Halibut Commission regulatory area for which it is endorsed. Regulatory areas are defined in the annual management measures published pursuant to § 300.62.

(3) *Charter vessel angler endorsement.* A charter halibut permit is valid for up to the maximum number of charter vessel anglers for which the charter halibut permit is endorsed.

(b) *Qualifications for a charter halibut permit.* A charter halibut permit for IPHC regulatory area 2C must be based on meeting participation requirements in area 2C. A charter halibut permit for IPHC regulatory area 3A must be based on meeting participation requirements

in area 3A. Qualifications for a charter halibut permit in each area must be determined separately and must not be combined.

(1) NMFS will issue a charter halibut permit to a person who meets the following requirements:

(i) The person applies for a charter halibut permit within the application period specified in the FEDERAL REGISTER and completes the application process pursuant to paragraph (h) of this section.

(ii) The person is the individual or non-individual entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet the minimum participation requirements described in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section for one or more charter halibut permits, unless the person is applying as a successor-in-interest.

(A) Reported five (5) bottomfish logbook fishing trips or more during one year of the qualifying period; and

(B) Reported five (5) halibut logbook fishing trips or more during the recent participation period.

(iii) If the person is applying as a successor-in-interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that meet the participation requirements described in paragraphs (b)(1)(ii) of this section for one or more charter halibut permits, NMFS will require the following written documentation:

(A) If the applicant is applying on behalf of a deceased individual, the applicant must document that the individual is deceased, that the applicant is the personal representative of the deceased's estate appointed by a court, and that the applicant specifies who, pursuant to the applicant's personal representative duties, should receive the permit(s) for which application is made; or

(B) If the applicant is applying as a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

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(iv) If more than one applicant claims that they are the successor-in-interest to a dissolved entity, NMFS will award the permit or permits for which the dissolved entity qualified in the name(s) of the applicants that submitted a timely application and proved that they are a successor-in-interest to the dissolved entity.

(2) Notwithstanding any other provision in this subpart, and except as provided in paragraph (b)(1)(iv) of this section,

(i) One logbook fishing trip shall not be credited to more than one applicant;

(ii) One logbook fishing trip made pursuant to one ADF&G Business Owner License shall not be credited to more than one applicant; and

(iii) Participation by one charter halibut fishing business shall not be allowed to support issuance of permits to more than one applicant.

(3) For purposes of this section, the term "ADF&G Business Owner(s) License(s)" includes a "business registration," "sport fish business owner license," "sport fish business license," and "ADF&G business license".

(c) *Number of charter halibut permits.* An applicant that meets the participation requirements in paragraph (b) of this section will be issued the number of charter halibut permits equal to the lesser of the number of permits determined by paragraphs (c)(1) or (c)(2) of this section as follows:

(1) The total number of bottomfish logbook fishing trips made pursuant to the applicant's ADF&G Business License in the applicant-selected year divided by five, and rounded down to a whole number; or

(2) The number of vessels that made the bottomfish logbook fishing trips in the applicant-selected year.

(d) *Designation of transferability.* Each permit issued to an applicant under paragraph (c) of this section will be designated as transferable or non-transferable.

(1) Minimum participation criteria for a transferable permit are described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section as follows:

(i) Reported fifteen (15) bottomfish logbook fishing trips or more from the same vessel during one year of the qualifying period; and

(ii) Reported fifteen (15) halibut logbook fishing trips or more from the same vessel during the recent participation period.

(iii) The vessel used during the recent participation period is not required to be the same vessel used during the qualifying period.

(2) The number of transferable charter halibut permits issued to an applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described in paragraphs (d)(1)(i) or (d)(1)(ii) of this section.

(e) *Angler endorsement.* A charter halibut permit will be endorsed as follows:

(1) The angler endorsement number for the first transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period in that area.

(2) The angler endorsement number for each subsequent transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all transferable permits issued to the applicant are assigned an angler endorsement.

(3) The angler endorsement number for the first non-transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period for a vessel not already used to determine an angler endorsement in that area.

(4) The angler endorsement number for each subsequent non-transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all non-transferable permits issued to the applicant are assigned an angler endorsement.

(5) The angler endorsement number will be four (4) if the greatest number of charter vessel anglers reported on any logbook fishing trip for an area in

the qualifying period is less than four (4), or no charter vessel anglers were reported on any of the applicant's logbook fishing trips in the applicant-selected year.

(6) The angler endorsement number will be six (6) on a charter halibut permit issued pursuant to military service under paragraph (g)(3) of this section.

(f) For purposes of this section, the following terms are defined as follows:

(1) *Applicant-selected year* means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant's number of transferable and non-transferable permits.

(2) *Bottomfish logbook fishing trip* means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: The statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.

(3) *Halibut logbook fishing trip* means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: The number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.

(4) *Logbook fishing trip* means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip, except that for multi-day trips, the number of trips will be equal to the number of days of the multi-day trip, e.g., a two day trip will be counted as two trips.

(5) *Official charter halibut record* means the information prepared by NMFS on participation in charter halibut fishing in Area 2C and Area 3A that NMFS will use to implement the

Charter Halibut Limited Access Program and evaluate applications for charter halibut permits.

(6) *Qualifying period* means the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2004 and 2005.

(7) *Recent participation period* means the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2008.

(g) *Unavoidable circumstance*. Unavoidable circumstance claims must be made pursuant to paragraph (h)(6) of this section, and will be limited to persons who would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance is recognized. This unavoidable circumstance provision cannot be used to upgrade the number of permits issued or to change a non-transferable permit to a transferable permit, and is limited to the following circumstances.

(1) *Recent participation period*. An applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;

(ii) The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

(iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period.

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(v) If the applicant proves the foregoing (*see* paragraphs (g)(1)(i) through (iv) of this section), the applicant will receive the number of transferable and non-transferable permits and the angler endorsements on these permits that result from the application of criteria in paragraphs (b), (c), (d), (e), and (f) of this section.

(2) *Qualifying period.* An applicant for a charter halibut permit that meets the participation requirement for the recent participation period but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves paragraphs (g)(2)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in at least one year of the qualifying period;

(ii) The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

(iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in at least one year of the qualifying period.

(v) If the applicant proves the foregoing (*see* paragraphs (g)(2)(i) through (iv) of this section), the applicant will receive either:

(A) One non-transferable permit with an angler endorsement of four (4); or

(B) The number of transferable and non-transferable permits, and the angler endorsement on those permits, that result from the logbook fishing trips that the applicant proves likely would have taken by the applicant but for the circumstance that thwarted the applicant's specific intent to operate a charter halibut fishing business in one year of the qualifying period and the applicant did not participate during the other year of the qualifying period.

(3) *Military service.* An applicant for a charter halibut permit that meets the participation requirement in the recent participation period, but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves the following:

(i) The applicant was ordered to report for active duty military service as a member of a branch of the U.S. military, National Guard, or military reserve during the qualifying period; and

(ii) The applicant had a specific intent to operate a charter halibut fishing business that was thwarted by the applicant's order to report for military service.

(iii) The number of transferable and non-transferable charter halibut permit(s) that an applicant may receive under paragraph (g)(3) of this section will be based on the criteria in paragraph (g)(2)(v)(B) of this section. Angler endorsements on all such charter halibut permits will be pursuant to paragraph (e)(2) of this section.

(h) *Application for a charter halibut permit.* (1) An application period of no less than 60 days will be specified by notice in the FEDERAL REGISTER during which any person may apply for a charter halibut permit. Any application that is submitted by mail and postmarked, or submitted by hand delivery or facsimile, after the last day of the application period will be denied. Electronic submission other than by facsimile will be denied. Applications must be submitted to the address given in the FEDERAL REGISTER notice of the application period.

(2) *Charter halibut permit.* To be complete, a charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicant's knowledge, all statements in the application are true and the applicant complied with all legal requirements for logbook fishing trips in the qualifying period and recent participation period that were reported under the applicant's ADF&G Business Owner Licenses. An application for a charter halibut permit will be made available by NMFS. Completed applications may be submitted by mail, hand delivery, or

facsimile at any time during the application period announced in the FEDERAL REGISTER notice of the application period described at paragraph (h)(1) of this section.

(3) *Application procedure.* NMFS will create the official charter halibut record and will accept all application claims that are consistent with the official charter halibut record. If an applicant's claim is not consistent with the official charter halibut record, NMFS will issue non-transferable interim permit(s) for all undisputed permit claims, and will respond to the applicant by letter specifying a 30-day evidentiary period during which the applicant may provide additional information or argument to support the applicant's claim for disputed permit(s). Limits on the 30-day evidentiary period are as follows:

- (i) An applicant shall be limited to one 30-day evidentiary period; and
- (ii) Additional information received after the 30-day evidentiary period has expired will not be considered for purposes of the initial administrative determination.

(4) After NMFS evaluates the additional information submitted by the applicant during the 30-day evidentiary period, it will take one of the following two actions.

- (i) If NMFS determines that the applicant has met its burden of proving that the official charter halibut record is incorrect, NMFS will amend the official charter halibut record and use the official charter halibut record, as amended, to determine whether the applicant is eligible to receive one or more charter halibut permits, the nature of those permits and the angler and area endorsements on those permits; or

- (ii) If NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect, NMFS will notify the applicant by an initial administration determination, pursuant to paragraph (h)(5) of this section.

(5) *Initial Administration Determination (IAD).* NMFS will send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS determines that the applicant has not met its burden of proving that the offi-

cial charter halibut record is incorrect or that other reasons exist to initially deny the application. The IAD will indicate the deficiencies in the application and the deficiencies with the information submitted by the applicant in support of its claim.

(6) *Appeal.* An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to §679.43 of this title.

- (i) If the applicant does not apply for a charter halibut permit within the application period specified in the FEDERAL REGISTER, the applicant will not receive any interim permits pending final agency action on the application.

- (ii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, the applicant will receive the number and kind of interim permits which are not in dispute, according to the information in the official charter halibut record.

- (iii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, but according to the information in the official charter halibut record, the applicant would not be issued any permits, the applicant will receive one interim permit with an angler endorsement of four (4).

- (iv) All interim permits will be non-transferable and will expire when NMFS takes final agency action on the application.

(i) *Transfer of a charter halibut permit—(1) General.* A transfer of a charter halibut permit is valid only if it is approved by NMFS. NMFS will approve a transfer of a charter halibut permit if the permit to be transferred is a transferable permit issued under paragraph (d)(2) of this section, if a complete transfer application is submitted, and if the transfer application meets the standards for approval in paragraph (i)(2) of this section.

(2) *Standards for approval of transfers.* NMFS will transfer a transferable charter halibut permit to a person designated by the charter halibut permit holder if, at the time of the transfer the following standards are met:

- (i) The person designated to receive the transferred permit is a U.S. citizen

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or a U.S. business with a minimum of 75 percent U.S. ownership;

(ii) The parties to the transfer do not owe NMFS any fines, civil penalties or any other payments;

(iii) The transfer is not inconsistent with any sanctions resulting from Federal fishing violations;

(iv) The transfer will not cause the designated recipient of the permit to exceed the permit limit at paragraph (j) of this section, unless an exception to that limit applies;

(v) A transfer application is completed and approved by NMFS; and

(vi) The transfer does not violate any other provision in this part.

(3) For purposes of paragraph (i)(2) of this section, a U.S. business with a minimum of 75 percent U.S. ownership means a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity where at least 75 percent of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(4) *Application to transfer a charter halibut permit.* To be complete, a charter halibut permit transfer application must have notarized and dated signatures of the applicants, and the applicants must attest that, to the best of the applicants' knowledge, all statements in the application are true. An application to transfer a charter halibut permit will be made available by NMFS. Completed transfer applications may be submitted by mail or hand delivery at any time to the addresses listed on the application. Electronic or facsimile deliveries will not be accepted.

(5) *Denied transfer applications.* If NMFS does not approve a charter halibut permit transfer application, NMFS will inform the applicant of the basis for its disapproval.

(6) *Transfer due to court order, operation of law or as part of a security agreement.* NMFS will transfer a charter halibut permit based on a court order, operation of law or a security agreement, if NMFS determines that a transfer application is complete and the transfer will not violate an eligibility criterion for transfers.

(j) *Charter halibut permit limitations—*

(1) *General.* A person may not own, hold, or control more than five (5) charter halibut permits except as provided by paragraph (j)(4) of this section. NMFS will not approve a transfer application that would result in the applicant that would receive the transferred permit holding more than five (5) charter halibut permits except as provided by paragraph (j)(6) of this section.

(2) *Ten percent ownership criterion.* In determining whether two or more persons are the same person for purposes of paragraph (j)(1) of this section, NMFS will apply the definition of an "affiliation for the purpose of defining AFA entities" at § 679.2 of this title.

(3) A permit will cease to be a valid permit if the permit holder is:

(i) An individual and the individual dies; or

(ii) A non-individual (*e.g.*, corporation or partnership) and dissolves or changes as defined at paragraph (j)(5) of this section.

(iii) A transferable permit may be made valid by transfer to an eligible recipient.

(4) *Exception for initial recipients of permits.* Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may issue more than five (5) charter halibut permits to an initial recipient that meets the requirements described in paragraphs (b), (d), and (e) of this section for more than five (5) charter halibut permits, subject to the following limitations:

(i) This exception applies only to an initial recipient as the recipient exists at the time that it is initially issued the permits;

(ii) If an initial recipient of transferable permit(s) who is an individual dies, the individual's successor-in-interest may not hold more than five (5) charter halibut permits;

(iii) If an initial recipient permit holder that is a non-individual, such as a corporation or a partnership, dissolves or changes, NMFS will consider the new entity a new permit holder and the new permit holder may not hold more than five (5) charter halibut permits.

(5) For purposes of this paragraph (j), a "change" means:

(i) For an individual, the individual has died, in which case NMFS must be notified within 30 days of the individual's death; and

(ii) For a non-individual entity, the same as defined at § 679.42(j)(4)(i) of this title, in which case the permit holder must notify NMFS within 15 days of the effective date of the change as required at § 679.42(j)(5) of this title.

(6) *Exception for transfer of permits.* Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may approve a permit transfer application that would result in the person that would receive the transferred permit(s) holding more than five (5) transferable charter halibut permits if the parties to the transfer meet the following conditions:

(i) The designated person that would receive the transferred permits does not hold any charter halibut permits;

(ii) All permits that would be transferred are transferable permits;

(iii) The permits that would be transferred are all of the transferable permits that were awarded to an initial recipient who exceeded the permit limitation of five (5) permits; and

(iv) The person transferring its permits also is transferring its entire charter vessel fishing business, including all the assets of that business, to the designated person that would receive the transferred permits.

(k) *Community charter halibut permit—*(1) *General.* A Community Quota Entity (CQE), as defined in § 679.2 of this title, representing an eligible community listed in paragraph (k)(2) of this section, may receive one or more community charter halibut permits. A community charter halibut permit issued to a CQE will be designated for area 2C or area 3A, will be non-transferable, and will have an angler endorsement of six (6).

(2) *Eligible communities.* Each community charter halibut permit issued to a CQE under paragraph (k)(1) of this section will specify the name of an eligible community on the permit. Only the following communities are eligible to receive community charter halibut permits:

(i) For Area 2C: Angoon, Coffman Cove, Edna Bay, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock,

Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay, Whale Pass.

(ii) For Area 3A: Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lyons, Seldovia, Tatitlek, Tyonek, Yakutat.

(3) *Limitations.* The maximum number of community charter halibut permits that may be issued to a CQE for each eligible community the CQE represents is as follows:

(i) A CQE representing an eligible community or communities in regulatory area 2C may receive a maximum of four (4) community charter halibut permits per eligible community designated for Area 2C.

(ii) A CQE representing an eligible community or communities in regulatory area 3A may receive a maximum of seven (7) community charter halibut permits per eligible community designated for Area 3A.

(4) NMFS will not approve a transfer that will cause a CQE representing a community or communities to hold more than the total number of permits described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, per community, including community charter halibut permits granted to the CQE under this paragraph (k) and any charter halibut permits acquired by the CQE by transfer under paragraph (i) of this section.

(i) The maximum number of charter halibut and community charter halibut permits that may be held by a CQE per community represented by the CQE in regulatory area 2C is eight (8).

(ii) The maximum number of charter halibut and community charter halibut permits that may be held by a CQE per community represented by the CQE in regulatory area 3A is fourteen (14).

(5) *Limitation on use of permits.* The following limitations apply to community charter halibut permits issued to a CQE under paragraph (k)(1) of this section.

(i) Every charter vessel fishing trip authorized by such a permit and on which halibut are caught and retained must begin or end at a location(s) specified on the application for a community charter halibut permit and that is

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within the boundaries of the eligible community designated on the permit. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

(ii) Community charter halibut permits may be used only within the regulatory area for which they are designated to catch and retain halibut.

(6) *Application procedure.* To be complete, a community charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicants' knowledge, all statements in the application are true and complete. An application for a community charter halibut permit will be made available by NMFS and may be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application. Electronic deliveries other than facsimile will not be accepted.

(1) *Military charter halibut permit.* NMFS will issue a military charter halibut permit without an angler endorsement to an applicant provided

that the applicant is a Morale, Welfare and Recreation Program of the United States Armed Services.

(1) *Limitations.* A military charter halibut permit is non-transferable and may be used only in the regulatory area (2C or 3A) designated on the permit.

(2) *Application procedure.* An applicant may apply for a military charter halibut permit at any time. To be complete, a military charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicants' knowledge, all statements in the application are true and complete. An application for a military charter halibut permit will be made available by NMFS and may be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application. Electronic deliveries other than facsimile will not be accepted.

[75 FR 600, Jan. 5, 2010, as amended at 75 FR 56909, Sept. 17, 2010]



FIGURE 1 TO SUBPART E OF PART 300—SITKA LOCAL AREA MANAGEMENT PLAN

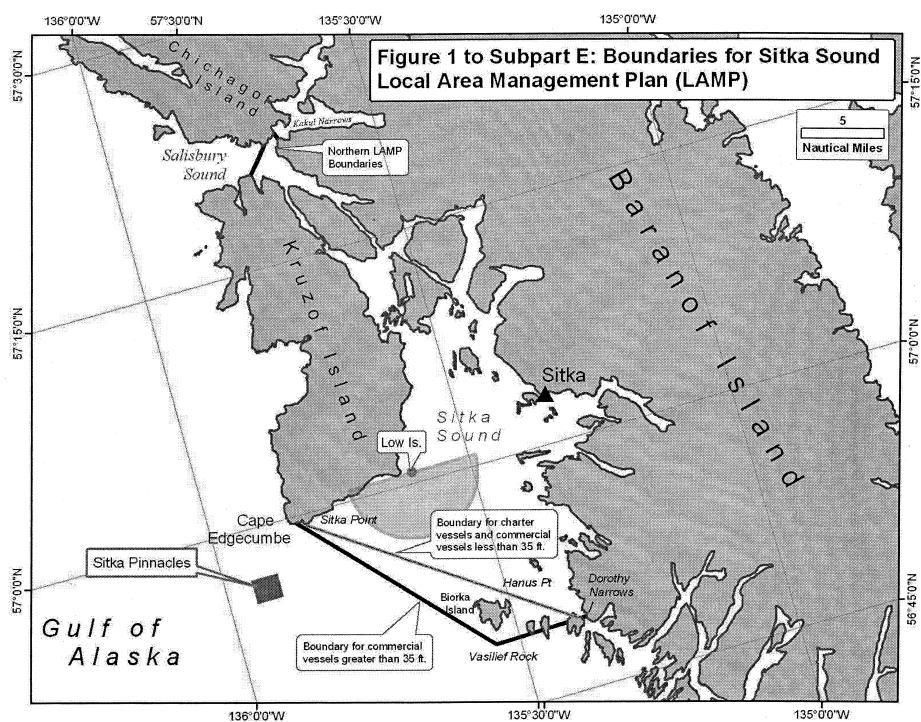
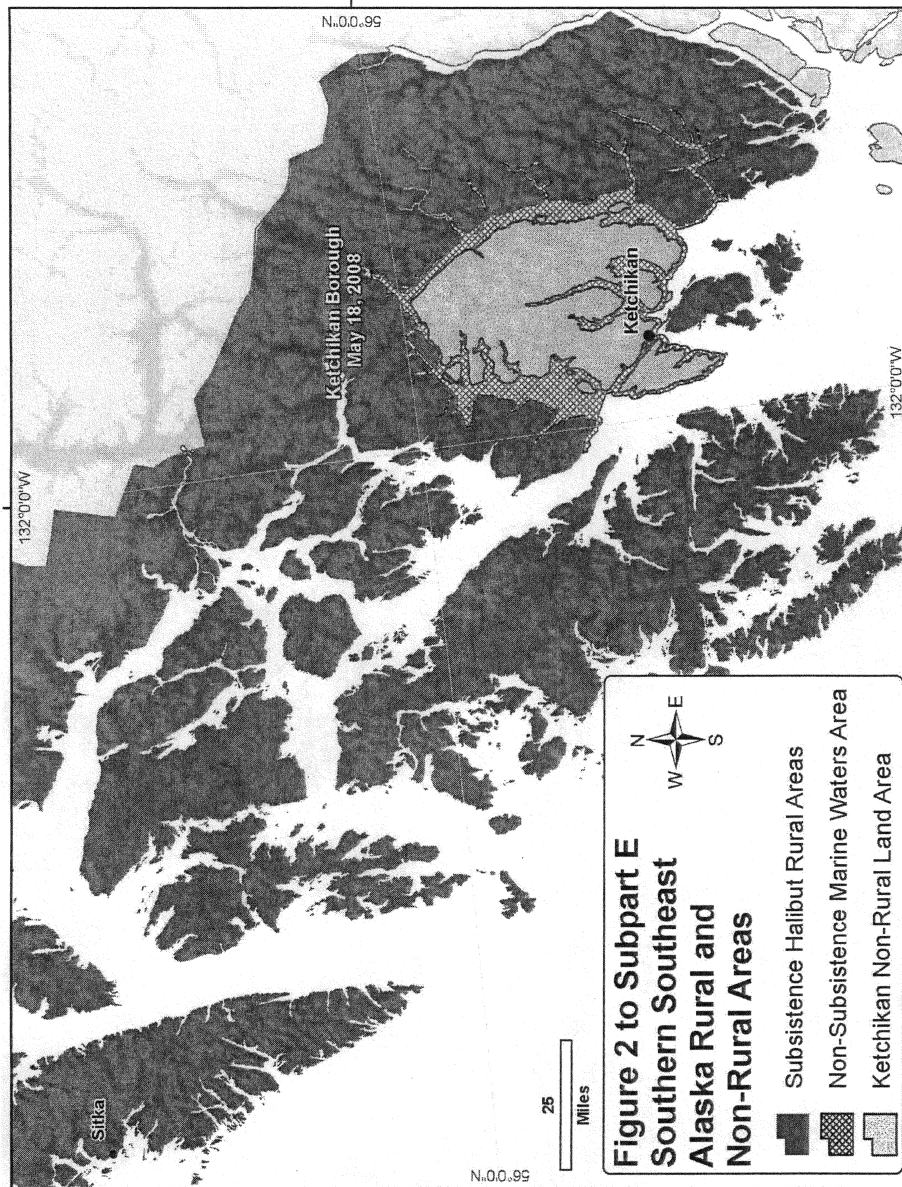
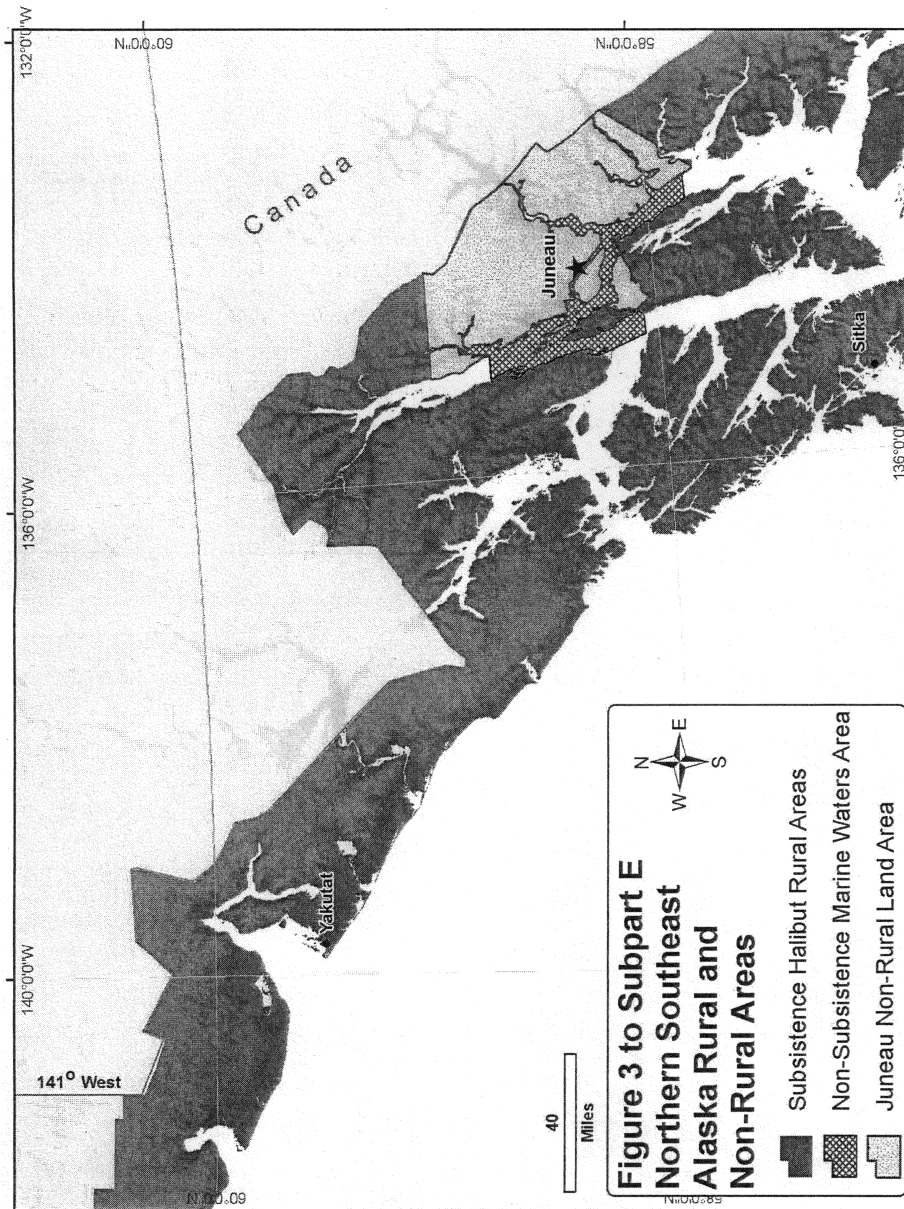


FIGURE 2 TO SUBPART E OF PART 300—SOUTHERN SOUTHEAST ALASKA RURAL AND NON-RURAL AREAS



[74 FR 57110, Nov. 4, 2009]

FIGURE 3 TO SUBPART E OF PART 300—NORTHERN SOUTHEAST ALASKA RURAL AND NON-RURAL AREAS



[74 FR 57110, Nov. 4, 2009]

**Pt. 300, Subpt. E, Fig. 4**

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FIGURE 5 TO SUBPART E OF PART 300—ANCHORAGE, MATANUSKA-SUSITNA, AND KENAI RURAL AND NON-RURAL AREAS

Figure 5 to Subpart E of Part 300—Anchorage, Matanuska-Susitna, and Kenai Rural and Non-Rural Areas

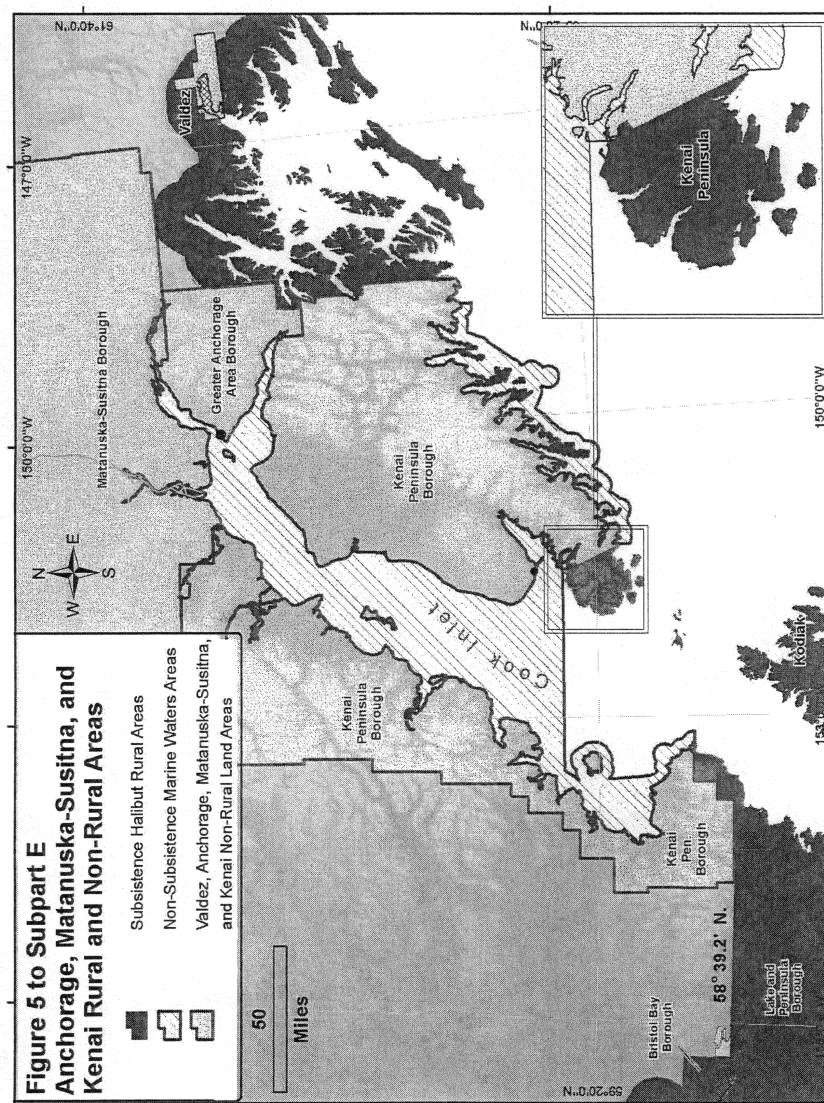
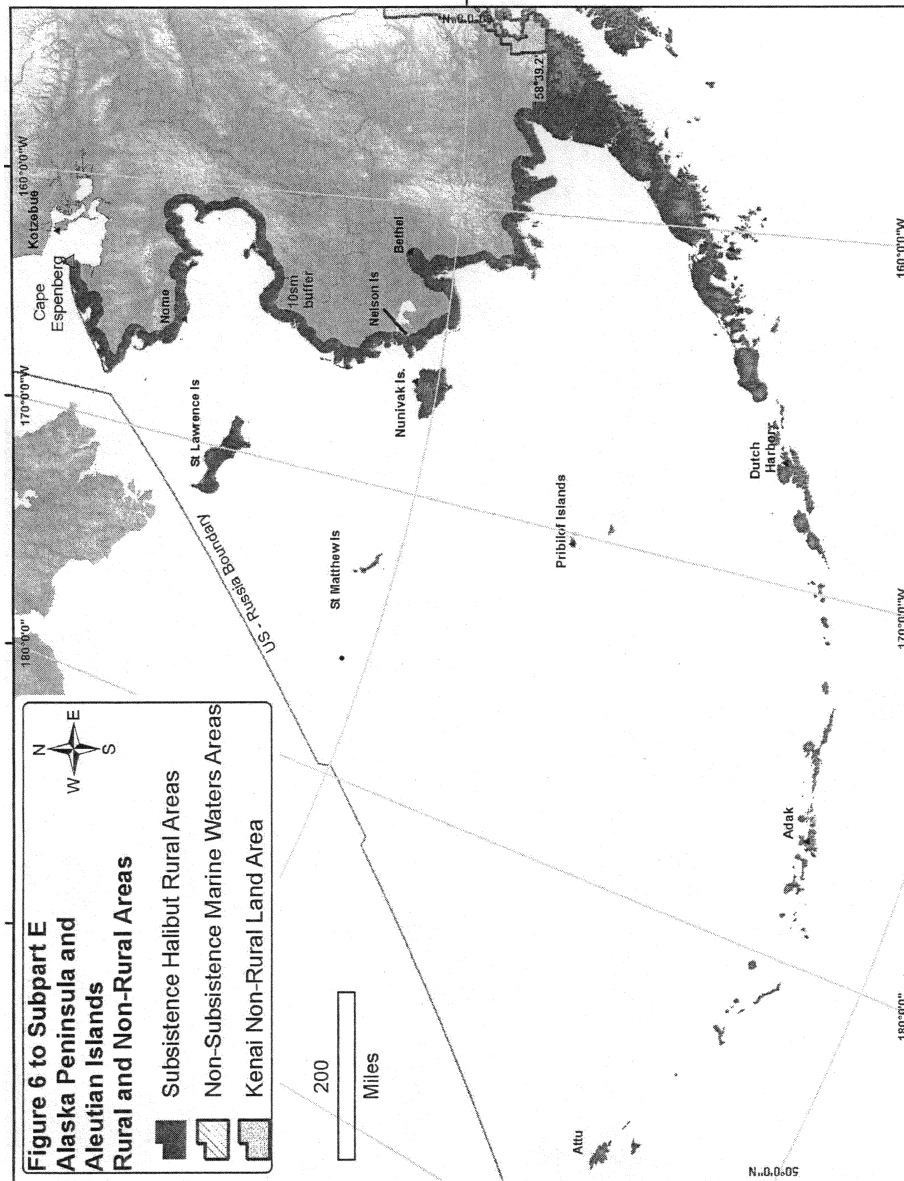


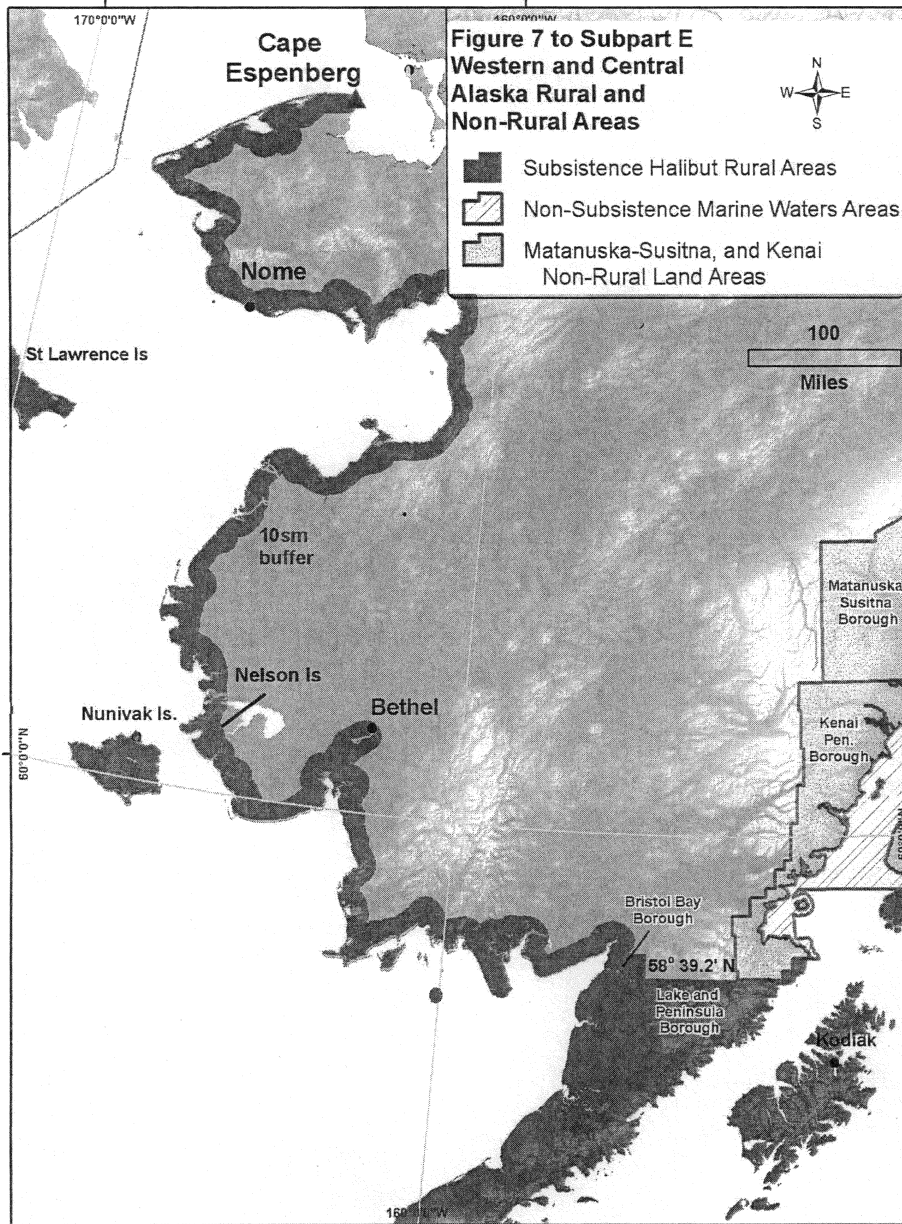
FIGURE 6 TO SUBPART E OF PART 300—ALASKA PENINSULA AND ALEUTIAN ISLANDS  
RURAL AND NON-RURAL AREAS



[74 FR 57110, Nov. 4, 2009]



FIGURE 7 TO SUBPART E OF PART 300—WESTERN AND CENTRAL ALASKA RURAL AND NON-RURAL AREAS



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[74 FR 57110, Nov. 4, 2009]

### Subpart F—Fraser River Sockeye and Pink Salmon Fisheries

AUTHORITY: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

#### § 300.90 Purpose and scope.

This subpart implements the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644) (Act) and is intended to supplement, not conflict with, the fishery regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985 (Treaty).

#### § 300.91 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

*All-citizen* means any person who is not a treaty Indian fishing in that treaty Indian's tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

*Authorized officer* means, in addition to those individuals identified under *authorized officer* at § 300.2, any state, Federal, or other officer as may be authorized by the Secretary in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

*Commission* means the Pacific Salmon Commission established by the Pacific Salmon Treaty.

*Consistent regulation or consistent order* means any Federal, state, or treaty Indian tribal regulation or order that is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

*Fishing gear*—

(1) *Gill net* means a fishing net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

(2) *Purse seine* means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(3) *Reef net* means a non-self-fishing open bunt square or rectangular section of mesh netting suspended between two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(4) *Troll fishing gear* means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(5) *Treaty Indian fishing gear* means fishing gear defined authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

*Fraser River Panel* means the Fraser River Panel established by the Pacific Salmon Treaty.

*Fraser River Panel Area (U.S.)* means the United States' portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(1) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° N. lat., excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Beale and all the waters of Nitinat Lake and the entrance thereto.

(2) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (1) of this definition, thence to the nearest point of Cape Flattery, thence following the southerly shore of



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Juan de Fuca Strait to Point Wilson, on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway (Burlington Northern Railroad), thence northerly following the shoreline of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, then westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shoreline to Welcome Point on Sechart Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island, to the starting point at Bonilla Point, as shown on the British Admiralty Chart Number 579, and on the U.S. Coast and Geodetic Survey Chart Number 6300, as corrected to March 14, 1930, copies of which are annexed to the 1930 Convention between Canada and the United States of America for Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System as amended, signed May 26, 1930. [Note: U.S. Coast and Geodetic Survey Chart Number 6300 has been replaced and updated by NOAA Chart Number 18400.]

(3) The Fraser River and the streams and lakes tributary thereto.

(4) The Fraser River Panel Area (U.S.) includes Puget Sound Management and Catch Reporting Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 7D, and 7E as defined in the Washington State Administrative Code at Chapter 220-22 as of June 27, 1986.

*Fraser River Panel regulations* means regulations applicable to the Fraser River Panel Area that are recommended by the Commission (on the basis of proposals made by the Fraser

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River Panel) and approved by the Secretary of State.

*Mesh size* means the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh of a net.

*Pink salmon* means *Oncorhynchus gorbuscha*.

*Sockeye salmon* means the anadromous form of *Oncorhynchus nerka*.

*Treaty fishing places* (of an Indian tribe) means locations within the Fraser River Panel Area (U.S.) as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), to be places at which that treaty Indian tribe may take fish under rights secured by treaty with the United States.

*Treaty Indian* means any member of a treaty Indian tribe whose treaty fishing place is in the Fraser River Panel Area (U.S.) or any assistant to a treaty Indian authorized to assist in accordance with §300.95(d).

*Treaty Indian tribe* means any of the federally recognized Indian tribes of the State of Washington having fishing rights secured by treaty with the United States to fish for salmon stocks subject to the Pacific Salmon Treaty in treaty fishing places within the Fraser River Panel Area (U.S.). Currently these tribes are the Makah, Tribe, Lower Elwha Klallam Tribe, Port Gamble Klallam Tribe, Jamestown Klallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribe.

### § 300.92 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) with respect to fishing activities addressed herein.

(b) Any person fishing subject to this subpart is bound by the international boundaries now recognized by the United States within the Fraser River Panel Area (U.S.) described in §300.91.

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notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the EEZ should consult Federal regulations at part 663 of this title for applicable requirements, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with §663.6. Federal regulations governing salmon fishing in the EEZ, which includes a portion of the Fraser River Panel Area (U.S.), are at part 661 of this title. Annual regulatory modifications are published in the FEDERAL REGISTER.

(d) Except as otherwise provided in this subpart, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR part 249, subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this subpart relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

### § 300.93 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220-69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

### § 300.94 Prohibitions and restrictions.

In addition to the prohibitions in §300.4, the following prohibitions and restrictions apply.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to

sockeye and pink salmon fishing in the Fraser River Panel Area (U.S.):

(1) The Fraser River Panel Area (U.S.) is closed to sockeye and pink salmon fishing, unless opened by Fraser River Panel regulations or by inseason orders of the Secretary issued under §300.97 that give effect to orders of the Fraser River Panel, unless such orders are determined not to be consistent with domestic legal obligations. Such regulations and inseason orders may be further implemented by regulations promulgated by the United States, the State of Washington, or any treaty Indian tribe, which are also consistent with domestic legal obligations.

(2) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for, or take and retain, any sockeye or pink salmon:

(i) Except during times or in areas that are opened by Fraser River Panel regulations or by inseason order, except that this provision will not prohibit the direct transport of legally caught sockeye or pink salmon to off-loading areas.

(ii) By means of gear or methods not authorized by Fraser River Panel regulations, inseason orders, or other applicable Federal, state, or treaty Indian tribal law.

(iii) In violation of any applicable area, season, species, zone, gear, or mesh size restriction.

(b) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to—

(1) Remove the head of any sockeye or pink salmon caught in the Fraser River Panel Area (U.S.), or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(2) Fail to permit an authorized officer to inspect a record or report required by the State of Washington or treaty Indian tribal authority.

(c) Notwithstanding paragraph (a) of this section, nothing in this subpart will be construed to prohibit the retention of sockeye or pink salmon caught by any person while lawfully engaged

in a fishery for subsistence or ceremonial purposes pursuant to treaty Indian tribal regulations, for recreational purposes pursuant to recreational fishing regulations promulgated by the State of Washington, or as otherwise authorized by treaty Indian tribal or State of Washington law or regulation, provided that such treaty Indian tribal or State regulation is consistent with U.S.-approved Commission fishery regimes, Fraser River Panel regulations, or inseason orders of the Secretary applicable to fishing in the Fraser River Panel Area (U.S.).

(d) The following types of fishing gear are authorized, subject to the restrictions set forth in this subpart and according to the times and areas established by Fraser River Panel regulations or inseason orders of the Secretary:

(1) All citizens: Gill net, purse seine, reef net, and troll fishing gear. Specific restrictions on all citizens gear are contained in the Washington State Administrative Code of Chapter 220–47.

(2) Treaty Indians: Treaty Indian fishing gear.

(e) Geographic descriptions of Puget Sound Salmon Management and Catch Reporting Areas, which are referenced in the Commission's regimes, Fraser River Panel regulations, and in inseason orders of the Secretary, are found in the Washington State Administrative Code at Chapter 220–22.

**§ 300.95 Treaty Indian fisheries.**

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe's treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over these fisheries. Fishing by a treaty Indian outside the applicable Indian tribe's treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in

accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(c) *Identification.* (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times while fishing or engaged in any activity related to fishing the treaty Indian identification required by 25 CFR 249.3 or by applicable tribal law.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(4) Any treaty Indian fishing under this subpart must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(d) *Fishing assistance.* (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian's tribe, receive fishing assistance from, and only from, the treaty Indian tribal member's spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this subpart.

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(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian's gear or location.

(3) Treaty Indians are prohibited from participating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries management organization, the Northwest Indian Fisheries Commission, the Commission, or a fisheries management agency of the United States or the State of Washington.

### § 300.96 Penalties.

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures described in the Magnuson-Stevens Act.

### § 300.97 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this subpart.

(b) *Notice of inseason orders.* (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through Area Code 206 toll-free telephone hotlines. All-citizen

fisheries: the hotline telephone number is published in the inseason notice procedures section of the annual management measures for West Coast Salmon Fisheries, published in the FEDERAL REGISTER; Treaty Indian fisheries hotline: 1-800-562-6142.

(2) Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(3) Inseason orders may also be communicated through news releases to radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the FEDERAL REGISTER as soon as practicable after they are issued.

[61 FR 35550, July 5, 1996, as amended at 74 FR 44771, Aug. 31, 2009]

## Subpart G—Antarctic Marine Living Resources

AUTHORITY: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

### § 300.100 Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (Act).

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The importation into the United States of any Antarctic marine living resource.

### § 300.101 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, such Act, or such Convention,

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the definition in this section shall apply.

*ACA* means the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*).

*Antarctic convergence* means a line joining the following points along the parallels of latitude and meridians of longitude:

| <i>Lat.</i> | <i>Long.</i> |
|-------------|--------------|
| 50° S.      | 0.           |
| 50° S.      | 30° E.       |
| 45° S.      | 30° E.       |
| 45° S.      | 80° E.       |
| 55° S.      | 80° E.       |
| 55° S.      | 150° E.      |
| 60° S.      | 150° E.      |
| 60° S.      | 50° W.       |
| 50° S.      | 50° W.       |
| 50° S.      | 0.           |

*Antarctic finfishes* include the following:

| Scientific name                              | Common name            |
|----------------------------------------------|------------------------|
| <i>Gobionotothen gibberifrons</i> ...        | Humped rockcod.        |
| <i>Notothenia rossii</i> .....               | Marbled rockcod.       |
| <i>Lepidionotus squamifrons</i> .....        | Grey rockcod.          |
| <i>Lepidionotothen kempi</i> .....           | Striped-eyed rockcod.  |
| <i>Dissostichus eleginoides</i> .....        | Patagonian toothfish.  |
| <i>Dissostichus mawsoni</i> .....            | Antarctic toothfish.   |
| <i>Electrona carlsbergi</i> .....            | Lanternfish.           |
| <i>Patagonotothen breviceauda guntheri</i> . | Patagonian rockcod.    |
| <i>Pleuragramma antarcticum</i> ...          | Antarctic silverfish.  |
| <i>Trematomus</i> spp. ....                  | Antarctic cods.        |
| <i>Chaenocephalus aceratus</i> .....         | Blackfin icefish.      |
| <i>Chaenodraco wilsoni</i> .....             | Spiny icefish.         |
| <i>Champsoscephalus gunnari</i> ....         | Mackerel icefish.      |
| <i>Chionodraco rastrospinosus</i> ..         | Ocellated icefish.     |
| <i>Pseudochaenichthys georgianus</i> .       | South Georgia icefish. |

*Antarctic marine living resources or AMLR(s)* means:

(1) The populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence;

(2) All parts or products of those populations and species set forth in paragraph (1) of this definition.

*Centralized Vessel Monitoring System (C-VMS)* means a system that uses satellite-linked vessel monitoring devices to allow for the reporting of vessel positional data, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State.

*Commission* means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

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*Convention waters* means all waters south of the Antarctic Convergence.

*Dealer* means the person who first receives AMLRs from a harvesting vessel or transshipment vessel or who imports AMLRs into, or re-exports AMLRs from, the United States.

*Directed fishing*, with respect to any species or stock of fish, means any fishing that results in such fish comprising more than 1 percent by weight, at any time, of the catch on board the vessel.

*Dissostichus catch document (DCD)* means the uniquely numbered catch documentation form approved by the Commission and issued by a flag state to its vessels authorized to harvest *Dissostichus* species.

*Dissostichus species* means Patagonian toothfish and/or Antarctic toothfish and their parts or products.

*Export* as used in §300.107(c) means any movement of a catch in its harvested or processed form from a territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of that customs union.

*Fish* means finfish, mollusks, and crustaceans.

*Fishery* means:

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

(2) Any fishing for such stocks.

*Harvesting vessel* means any vessel of the United States (this includes any boat, ship, or other craft), that is used for, equipped to be used for, or of a type that is normally used for harvesting.

*Import* as used in §§300.107(c) and 300.114 means the physical entering or bringing of a catch into any part of the geographical territory under the control of a State, except where the catch is landed or transshipped within the definitions of landing or transshipment.

*Individual permit* means an NSF permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has received an award

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from NSF to do research in the Antarctic); or a marine mammal permit issued under §216.31 of this chapter; or an endangered species permit issued under §222.21 of this chapter.

*Inspection vessel* means a vessel carrying a CCAMLR inspector and displaying the pennant approved by the Commission to identify such vessel.

*International observer* means a scientific observer operating in accordance with the CCAMLR Scheme of International Scientific Observation and the terms of a bilateral arrangement concluded between the United States and a Member of CCAMLR for the placement of a U.S. national onboard a vessel flagged by a Member of CCAMLR or for the placement of the national of a Member of CCAMLR onboard a U.S. flagged vessel.

*Land or Landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded; except for purposes of catch documentation as provided for in §300.107(c), land or landing means the initial transfer of catch in its harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed.

*Mobile transceiver unit* means a vessel monitoring system or VMS device, as set forth at §300.116, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this subpart.

*National observer* means a U.S. national placed and operating onboard a U.S. flagged vessel as a scientific observer or a foreign flagged vessel in accordance with §300.113.

*NSF* means National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Office for Law Enforcement (OLE)* refers to the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

*Port State* means the State that has control over a particular port area or free trade zone for the purposes of landing, transshipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transshipment certification.

*Port-to-port* means from the time the vessel leaves port to the time that the vessel returns to port and at all points in between.

*Real-time* means as soon as possible, but at least every 4 hours with no more than a 4-hour delay.

*Recreational fishing* means fishing with hook and line for personal use and not for sale.

*Re-export* as used in §§300.107(c) and 300.114 means any movement of a catch in its harvested or processed form from a territory under the control of a State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any Member State of that customs union of import is the first place of import, in which case the movement is an export within the definition of export.

*Scientific research activity* means any activity for which a person has a permit from NMFS under §216.31 of this title or an award letter from NSF or a permit from the NSF under 45 CFR part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

*Seal excluder device* means a barrier within the body of a trawl comprised of a metal frame, nylon mesh, or any material that results in an obstruction to seals between the mouth opening and the cod end of the trawl. The body of the trawl net forward of the barrier must include an escape opening through which seals entering the trawl can escape.

*Specially Validated Dissostichus Catch Document (SVD CD)* means a *Dissostichus* catch document that has been specially issued by a State to accompany seized or confiscated catch of *Dissostichus* spp. offered for sale or otherwise disposed of by the State.

*Transship or transshipment* means the transfer of fish or fish products from one vessel to another; Except for purposes of catch documentation as provided for in §§300.107(c) and 300.114, transship or transshipment means the transfer at sea of a catch in its harvested or processed form from a vessel to another vessel or means of transport and, where such transfer takes place

within the territory under the control of a Port State, for the purposes of effecting its removal from that State. Temporarily placing a catch on land or on an artificial structure to facilitate such transfer does not prevent the transfer from being a transshipment where the catch is not landed with the definition of landing.

*Vessel Monitoring System (VMS)* means a system that uses a mobile transceiver unit on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels, to receive automatic transmission of positional and other information, consistent with relevant CCAMLR conservation measures.

[61 FR 35550, July 5, 1996, as amended at 65 FR 30015, May 10, 2000; 68 FR 23227, May 1, 2003; 72 FR 48508, Aug. 23, 2007; 75 FR 18111, Apr. 9, 2010]

**§ 300.102 Relationship to other treaties, conventions, laws, and regulations.**

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.

(b) The ACA implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The ACA and its implementing regulations (45 CFR part 670) apply to certain defined activities of U.S. citizens south of 60° S. lat.

(c) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs.

**§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.**

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP)

Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit.* (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented under by the ACA and any superseding legislation. (Persons interested in conducting

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activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).

(2) The Convention for the Conservation of Antarctic Seals.

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) *Issuance criteria.* Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act.

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere.

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site's Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site's Management Plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site's Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities

conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Duration.* Permits issued under this section are valid for a period of up to five years. Applicants requesting a permit to reenter a Protected Site must include the most recent report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) *Modification.* (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore.

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements.

(2) If a requested modification is not in compliance with the terms of the Protected Site's Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(3) Additional conditions and restrictions. The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.



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(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act, or this subpart.

(2) Failure to report a change in the information submitted in a CEMP permit application within 10 days of the change is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(l) *Exceptions.* Entry into a Protected Site described in this section is lawful if committed under emergency conditions to prevent the loss of human life, compromise human safety, prevent the loss of vessels or aircraft, or to prevent environmental damage.

(m) *Protected sites.* (1) Sites protected by the Antarctic Treaty and regulated under the ACA are listed at 45 CFR part 670 subparts G and H.

(2) The following sites have been identified as CEMP Protected Sites subject to the regulatory authority of the Act:

(i) *Seal Islands, South Shetland Islands*—The Seal Islands are composed of islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Site includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is situated at 60°59'14" S. lat., 55°23'04" W. long.

(ii) *Cape Shirreff and the San Telmo Islands.* This designation takes effect on May 1, 1995. Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at 62°29' S. lat., 60°47' W. long., between Barclay Bay and Hero Bay. San Telmo Island is the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff. The boundaries of the Cape Shirreff CEMP Protected Site are identical to the boundaries of the Site of Special Scientific Interest No. 32, as specified by ATCM Recommendation XV-7. No manmade boundary markers indicate the limits of the SSSI or protected site. The boundaries are defined by natural features and include the entire area of the

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Cape Shirreff peninsula north of the glacier ice tongue margin, and most of the San Telmo Island group. For the purposes of the protected site, the entire area of Cape Shirreff and the San Telmo Island group is defined as any land or rocks exposed at mean low tide within the area delimited by the map of SSSI No. 32 and available from the Assistant Administrator.

[61 FR 35550, July 5, 1996, as amended at 68 FR 23227, May 1, 2003]

### § 300.104 Scientific research.

(a) The management measures issued pursuant to the procedures at § 300.111 do not apply to catches of less than 5 tons taken by any vessel for research purposes, unless otherwise indicated.

(b) Catches taken by any vessel for research purposes will be considered as part of any catch limit.

(c) The catch reporting procedure identified in management measures issued pursuant to the procedures at § 300.111 applies whenever the catch within any 5-day reporting period exceeds 5 tons, unless more specific reporting requirements apply to the species being fished.

(d) Any person, organization or institution planning to use a vessel for research purposes, when the estimated catch is expected to be less than 50 tons, must provide the following vessel and research notification to the Assistant Administrator at least 2 months in advance of the planned research:

(1) Name and registration number of vessel.

(2) Division and subarea in which research is to be carried out.

(3) Estimated dates of entering and leaving CCAMLR Convention Area.

(4) Purposes of research.

(5) Fishing equipment to be used (bottom trawl, midwater trawl, longline, crab pots, other).

(e) The following measures apply to any person planning to use any vessel for research purposes, when the estimated catch is expected to be more than 50 tons:

(1) The person must use the CCAMLR Format for Reporting Plans for Finfish Surveys in the Convention Area when the Total Catch is Expected to be More Than 50 Tons to report the details of

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the research plan to the Assistant Administrator at least 7 months in advance of the planned starting date for the research. A copy of the format is available from the Assistant Administrator.

(2) The format requires:

(i) The name of the CCAMLR Member.

(ii) Survey details.

(iii) Description of the vessel.

(iv) Description of the fishing gear to be used.

(v) Description of acoustic gear to be used.

(vi) Survey design and methods of data analyses.

(vii) Data to be collected.

(3) A summary of the results of any research fishing subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research fishing and a full report must be provided within 11 months.

(4) Catch and effort data resulting from the research fishing must be reported to the Assistant Administrator using the CCAMLR C4 haul-by-haul reporting format for research vessels.

### § 300.105 Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery on a species using a particular method in a statistical subarea for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

(2) Catch and effort data have never been submitted to CCAMLR; or

(3) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) An individual subject to these regulations intending to develop a new fishery shall notify the Assistant Administrator no later than July 1 of the year in which he or she intends to initiate the fishery and shall not initiate the fishery pending CCAMLR review.

(c) The notification shall be accompanied by information on:

(1) The nature of the proposed fishery, including target species, methods of fishing, proposed region and any

minimum level of catches that would be required to develop a viable fishery.

(2) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity.

(3) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery.

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

### § 300.106 Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under § 300.105.

(b) A fishery will continue to be classified as an exploratory fishery until sufficient information is available to:

(1) Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield.

(2) Review the fishery's potential impacts on dependent and related species.

(3) Allow the CCAMLR Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels and fishing gear.

(c) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the operator's harvesting permit, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(d) In addition to the requirements in § 300.112, any individual planning to enter an exploratory fishery must notify the Assistant Administrator no later than 4 months in advance of the annual meeting of CCAMLR. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of § 300.112 have been met and the meeting of CCAMLR, which receives and considers the notice made to the Assistant Administrator, has been concluded.

[61 FR 35550, July 5, 1996, as amended at 72 FR 48509, Aug. 23, 2007]

**§ 300.107 Reporting and recordkeeping requirements.**

(a) *Vessels.* The operator of any vessel required to have a harvesting permit under this subpart must:

(1) Accurately maintain on board the vessel all CCAMLR reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(4) Install a NMFS approved VMS unit on board U.S. vessels harvesting AMLR for use in real-time C-VMS port-to-port reporting to a NMFS-designated land-based fisheries monitoring center or centers. The requirements for the installation and operation of the VMS are set forth in § 300.116.

(b) *Dealers.* Dealers of AMLRs required to have a permit under this subpart must:

(1) Accurately maintain all reports and records required by their permits;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(c) *Catch documentation*—(1) *General.* (i) The CCAMLR DCD must accompany all shipments of *Dissostichus* species as required in this paragraph (c).

(ii) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD.

(iii) No shipment of *Dissostichus* species identified as originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 in the eastern and western Indian Ocean outside and north of the Convention Area shall be issued a preapproval.

(2) *Harvesting vessels.* (i) In addition to any AMLR harvesting permit or a High Seas Fishing Compliance Act permit issued pursuant to § 300.12, a U.S.

vessel harvesting or attempting to harvest *Dissostichus* species, wherever found, must possess a DCD issued by NMFS which is non-transferable. The master of the harvesting vessel must ensure that catch information specified on the DCD is accurately recorded.

(ii) Prior to offloading of *Dissostichus* species, the master of the harvesting vessel must:

(A) electronically convey by the most rapid means possible catch information to NMFS and record on the DCD a confirmation number received from NMFS;

(B) Obtain on the DCD (or copies thereof) the signature(s) of the following persons: if catch is offloaded for transshipment, the master of the vessel(s) to which the catch is transferred; or if catch is offloaded for landing, the signature of both the responsible official(s) designated by NMFS in the harvesting permit, and the dealer(s) that receives the catch at the port(s) of landing; and

(C) Sign the DCD (or copies thereof), electronically convey by the most rapid means possible each copy to NMFS, and provide a copy to each recipient of the catch.

(iii) The master of the harvesting vessel must submit the original DCD (or all copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season as authorized for that vessel on its harvesting permit.

(3) *Transshipment vessels.* (i) The master of a U.S. vessel issued a permit to transship *Dissostichus* species must, upon receipt of *Dissostichus* species, sign each DCD provided by the master of the harvesting vessel.

(ii) Prior to landing *Dissostichus* species, the master of the transshipping vessel must:

(A) Obtain on each DCD (or copies thereof) the signature(s) of both the responsible official(s) designated by NMFS in the permit, and the dealer(s) that receives the catch at the port(s) of landing and

(B) Sign each DCD (or copies thereof), and electronically convey by the most rapid means possible each copy to NMFS and to the flag state(s) of the harvesting vessel(s) and provide a copy

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to each dealer receiving *Dissostichus* species.

(iii) The master of the transshipping vessel must submit all DCDs with original signatures to NMFS no later than 30 days after offloading and retain copies for a period of 2 years.

(4) *Receivers upon landing.* Any dealer who receives *Dissostichus* species from a harvesting vessel or from a transshipment vessel must sign the DCD(s) provided by the master of the vessel.

(5) *Import.* (i) In order to import frozen *Dissostichus* species into the United States, any dealer must:

(A) Submit a preapproval application including the document number and export reference number on the DCD corresponding to the intended import shipment and, if necessary, additional information for NMFS to verify the use of real-time C-VMS port-to-port regardless of where the fish were harvested; and receive preapproval from NMFS.

(B) Ensure that the quantity of toothfish listed on the DCD (or *Dissostichus* re-export document if product is to be re-exported) matches the quantity listed on the preapproval application within a variance of 10 percent.

(C) The document and export reference numbers described in paragraph (c)(5)(i)(A) of this section must be entered by the dealer on the preapproval application for the shipment and sent to the address designated by NMFS so that NMFS receives the documentation at least 15 working days prior to import.

(D) Retain a copy of the DCD for his/her records and provide copies to exporters as needed.

(ii) Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(iii) Any dealer who imports fresh *Dissostichus* species must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the use of real-time C-VMS port-to-port is not required for imports of fresh *Dissostichus* species.

(6) *Re-export.* (i) In order to re-export *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* re-export document that includes the following information:

(1) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(2) The number of the original DCD(s);

(3) The name and address of the importer and point of import for the original import into the United States, or by submitting a copy of the preapproval issued for the original import;

(4) One of the following:

(i) The Container Number for the shipment if shipment is to be re-exported by vessel;

(ii) The Flight Number and Airway Bill/Bill of Lading if shipment is to be re-exported by air;

(iii) The Truck Registration Number and Nationality if shipment is to be re-exported by ground transportation; or

(iv) The Railway Transport Number if shipment is to be re-exported by rail.

(5) The dealer/exporter's name, address, and AMLR permit number; and

(6) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated *Dissostichus* re-export document.

(ii) For frozen *Dissostichus* species, re-export documents will be generated upon verification of the use of real-time C-VMS port-to-port except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

(iii) Dealers must include the original validated *Dissostichus* re-export document with the re-export shipment.

(iv) Any dealer who re-exports *Dissostichus* species must retain a copy of the re-export document at his/her place of business for a period of 2 years from the date on the DCD.

(7) *Export.* (i) In order to export U.S.-harvested *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* export document that includes the following information:

(1) The species, product type, and amount from the original DCD(s) that

is requested for export in the particular export shipment;

(2) The number of the original DCD(s);

(3) One of the following:

(i) The Container Number for the shipment if shipment is to be exported by vessel;

(ii) The Flight Number and Airway Bill/Bill of Lading if shipment is to be exported by air;

(iii) The Truck Registration Number and Nationality if shipment is to be exported by ground transportation; or

(iv) The Railway Transport Number if shipment is to be exported by rail.

(4) The dealer/exporter's name, address, and AMLR permit number;

(5) For frozen *Dissostichus* species, verification of the use of real-time C-VMS port-to-port except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007; and

(6) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated *Dissostichus* export document.

(ii) Dealers must include the original validated *Dissostichus* export document with the export shipment.

(iii) Any dealer who exports *Dissostichus* species must retain a copy of the export document at his/her place of business for a period of 2 years from the date on the DCD.

[65 FR 30016, May 10, 2000, as amended at 68 FR 23228, May 1, 2003; 72 FR 48509, Aug. 23, 2007; 75 FR 18112, Apr. 9, 2010]

**§ 300.108 Vessel and gear identification.**

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

(2) The operator of each harvesting vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical

suffix specific for the non-assigned vessel.

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

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

(c) *Gear identification.* (1) The operator of each harvesting vessel must ensure that all deployed fishing gear that is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

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

(d) *Maintenance.* The operator of each harvesting vessel must:

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

(2) Ensure that nothing on the harvesting vessel obstructs the view of the

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markings from an enforcement or inspection vessel or aircraft.

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

### § 300.109 Gear disposal.

(a) The operator of a harvesting vessel may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in a harvesting vessel's gear.

(b) The operator of a harvesting vessel may not abandon fishing gear in Convention waters.

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure "Marine Debris—A Potential Threat to Antarctic Marine Mammals" to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard "Avoidance of Incidental Mortality of Antarctic Marine Mammals" in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

### § 300.110 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*—120 mm.

(2) *Champscephalus gunnari*—90 mm.

(3) *Gobionotothen gibberifrons*, *Notothenia kemp*i and *Lepidorhirus squamifrons*—80 mm.

(b) Any means or device that would reduce the size or obstruct the opening of the meshes is prohibited.

(c) The following procedure will be used for determining compliance with mesh size requirements.

(1) *Description of gauges.* (i) Gauges for determining mesh sizes will be 2 mm thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) *Use of the gauge.* (i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) *Selection of meshes to be measured.*

(i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the

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point where the gauge is stopped, when using this gauge in accordance with paragraph (c)(2) of this section.

(5) Determination of the mesh size of the net will be the arithmetical mean in millimeters of the measurements of the total number of meshes selected and measured as provided for in paragraphs (c) (3) and (4) of this section, the arithmetical mean being rounded up to the next millimeter.

(6) *Inspection procedure.* (i) One series of 20 meshes, selected in accordance with paragraph (c)(3) of this section, will be measured by inserting the gauge manually without using a weight or dynamometer. The mesh size of the net will then be determined in accordance with paragraph (c)(5) of this section. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with paragraph (c)(3) of this section will be measured. The mesh size will then be recalculated in accordance with paragraph (c)(5) of this section, taking into account the 60 meshes already measured; this recalculation will be the mesh size of the net.

(ii) If the captain of the vessel contests the mesh size determined in accordance with paragraph (c)(6)(i) of this section, such measurement will not be considered for the determination of the mesh size and the net will be remeasured.

(A) A weight or dynamometer attached to the gauge will be used for remeasurement. The choice of weight or dynamometer is at the discretion of the inspectors. The weight will be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

(B) The accuracy of the weight or dynamometer must be certified by the appropriate national authority.

(C) For nets of a mesh size of 35 mm or less as determined in accordance with paragraph (c)(6)(i) of this section, a force of 19.61 newtons (equivalent to a mass of 2 kg) will be applied, and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kg).

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(D) For the purposes of determining the mesh size in accordance with paragraph (c)(5) of this section, when using a weight or dynamometer, one series of 20 meshes only will be measured.

### § 300.112 Harvesting permits.

(a) *General.* (1) Every vessel subject to the jurisdiction of the United States that attempts to reduce or reduces any AMLR to possession must have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a harvesting permit do not require a separate permit, but are covered by the permit issued the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the launching vessel.

(2) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is allowed under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) *Responsibility of owners and operators.* (1) The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of such vessel must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator within 15 days of the occurrence.

(4) The owners and operators of each krill harvesting vessel using trawl gear in Convention Area fisheries must install a seal excluder device.

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(c) *Application.* Application forms for harvesting permits are available at [www.nmfs.noaa.gov/gpea/forms.htm](http://www.nmfs.noaa.gov/gpea/forms.htm).

(1) A separate fully completed and accurate application must be completed and received by NMFS for each vessel for which a harvesting permit is requested.

(2) Applications for permits to harvest species other than krill must be received by NMFS at least 90 days before the date anticipated for the beginning of harvesting.

(3) Applications for a permit to harvest krill must be received by NMFS no later than June 1 immediately prior to the season in which the harvesting would occur. The applications must, to the extent possible, identify the products to be derived from the anticipated krill catch.

(d) *Issuance.* The Assistant Administrator may issue a harvesting permit to a vessel if the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention recommends that its size not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the management measures issued pursuant to § 300.111 of this subpart.

(5) Violate any other conservation measures in force with respect to the

United States under the Convention or the Act.

(e) *Duration.* A harvesting permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

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

(g) *Display.* Each harvesting vessel when engaged in harvesting must either have on board an up-to-date copy of its harvesting permit or a fully completed and up-to-date harvesting vessel certificate and the vessel operator must produce it for inspection upon the request of an authorized officer or CCAMLR inspector. In order for the certificate to be considered complete, the vessel owner or operator must enter on it the name and IRCS of the vessel issued the harvesting permit, the number of the harvesting permit and its date of issuance and expiration, the harvesting authorized by the permit, and all conditions and restrictions contained in the permit. Blank certificates are available from the Assistant Administrator.

(h) *Changes in information submitted by permit applicants or holders—*(1) *Changes in pending applications.* Applicants for a harvesting permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance—*(i) *Changes other than in the manner and amount of harvesting.* The owner or operator of a vessel that has been issued a harvesting permit must report to the Assistant Administrator in writing any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder. As soon as possible, the vessel owner or operator must revise any harvesting vessel certificate evidencing the permit, accordingly.

(ii) *Requested changes in the location, manner, or amount of harvesting.* Any



changes in the manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(i) *Additional conditions and restrictions.* The Assistant Administrator may revise the harvesting permit, effective upon notification to the permit holder, to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. The permit holder must, as soon as possible, direct the vessel operator to revise the harvesting vessel certificate, if any, accordingly.

(j) *Revision, suspension, or revocation for violations.* A harvesting permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner. Title 15 CFR part 904 governs permit sanctions under this subpart.

(k) *Transshipment vessels.* Any U.S. flagged vessel that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, must obtain from NMFS a harvesting permit authorizing transshipment. Transshipment vessels must comply with the permitting provisions of this section with respect to harvesting vessels.

[61 FR 35550, July 5, 1996, as amended at 65 FR 30017, May 10, 2000; 72 FR 48509, Aug. 23, 2007; 75 FR 18112, Apr. 9, 2010]

### § 300.113 Scientific observers.

This section applies to national and international observers as defined in § 300.101.

(a) This section applies to a national observer aboard U.S. vessels harvesting in the Convention Area, national observers placed on foreign flagged vessels and international observers placed on U.S. vessels harvesting in the Convention Area.

(b) All U.S. vessels fishing in the Convention Area must carry one or more scientific observers as required by CCAMLR conservation and management measures or as specified in a NMFS-issued AMLR Harvesting Permit.

(c) All U.S. vessels conducting longline sink rate testing outside the Convention area and pursuant to CCAMLR protocols must carry one or more scientific observers as specified in a NMFS-issued AMLR Harvesting Permit.

(d) *Procurement of observers by vessel.* Owners of vessels required to carry scientific observers under this section must arrange for observer services in coordination with the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division. The vessel owner is required to pay for observer services through an observer service provider who has provided observer services to the Federal government within the past year. In situations where no qualified observer is available through a qualified observer provider, the Secretary may authorize a vessel owner to arrange for an observer by alternative methods. An observer may not be paid directly by the vessel owner.

(e) *Insurance.* The observer service provider or vessel owner must provide insurance for observers that provides compensation in the event of an injury or death during the entire deployment, from the point of hire location to return, equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.80 of this title.

(f) *Educational requirements.* National observer candidates must:

(1) Have a Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences; or

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(2) Have successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course.

(g) *Health requirements.* National observers must have a signed and dated statement from a licensed physician that he or she has physically examined the observer. The statement must confirm that, based upon the physical examination, the observer does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily. The statement must declare that prior to the examination; the physician was made aware of the duties of an observer and the dangerous, remote and rigorous nature of the work. The physician's statement must be submitted to the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division program office prior to approval of an observer. The physical exam must have occurred during the 12 months prior to the observer's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(h) *Vessel responsibilities.* An operator of a vessel required to carry one or more scientific observers must:

(1) *Accommodations and food.* Provide, at no cost to the observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel; and

(2) *Safe conditions.* (i) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(ii) Have on board:

(A) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I. NMFS will grant a waiver from the Voluntary Safety

decal provision if the vessel is in compliance with the standards of the observer vessel safety check list developed by the Northeast Fisheries Science Center <http://www.nefsc.noaa.gov/femad/fsb/> or equivalent certification issued by the Flagging State;

(B) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(C) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) *Health and safety regulations.* Comply with the Observer health and safety regulations at part 600 of this title. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list.

(4) *Transmission of data.* Facilitate transmission of observer data by allowing observers, on request, to use the vessel's communications equipment and personnel for the confidential entry, transmission, and receipt of work-related messages.

(5) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position, course and speed.

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

(7) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(8) *Records.* Allow observers to inspect and copy the vessel's CCAMLR DCD, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(9) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins;

(ii) Providing the observers with a safe work area adjacent to the sample collection site;

(iii) Collecting bycatch when requested by the observers;

(iv) Collecting and carrying baskets of fish when requested by observers; and

(v) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(10) *Transfer at sea.* (i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(i) *Standards of observer conduct*—(1) *Observers:* (i) Must not have a direct financial interest in the fishery being observed, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(2) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(j) *Standards of observer behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(1) Observers must perform their assigned duties as described in the CCAMLR Scientific Observers Manual and must complete the CCAMLR Scientific Observer Logbooks and submit them to the CCAMLR Data Manager at the intervals specified by the Data Manager.

(2) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(3) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, or NMFS.

(4) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(i) Engaging in the use, possession, or distribution of illegal drugs; or

(ii) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(k) *Sampling station.* (1) Minimum work space aboard at sea processing

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vessels. The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(2) Table aboard at-sea processing vessels. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(3) Other requirement for at-sea processing vessels. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

[72 FR 48510, Aug. 23, 2007]

### § 300.114 Dealer permits and preapproval.

(a) *General.* (1) A dealer intending to import or re-export AMLR must obtain an AMLR dealer permit valid for one year. Preapproval from NMFS is required for each shipment of frozen *Dissostichus* species. The permit holder may only conduct those specific activities stipulated by the permit.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit issued under § 300.112(a)(1) or its importation has been authorized by a NMFS-issued dealer permit and preapproval issued under § 300.114(a)(1). AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit or the individual permit or dealer permit and, in the case of frozen *Dissostichus* species, the preapproval certification granted by NMFS to allow import. NMFS will only accept electronic catch documents for toothfish imports.

(3) In no event may a marine mammal be imported into the United States

unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for AMLR dealer permits and preapproval are available from NMFS. With the exception of the U.S. Customs 7501 entry number, a complete and accurate application must be received by NMFS for each preapproval at least 15 working days before the anticipated date of the first receipt, importation, or re-export. Dealers must supply the U.S. Customs 7501 entry number at least three working days prior to a *Dissostichus* species shipment's arrival.

(c) *Fees.* A fee to recover the administrative expenses associated with processing preapproval applications will be charged. The amount of the fee will be determined in accordance with procedures specified in the NOAA Finance Handbook for calculating administrative costs of special products and services. The fee is specified with the preapproval application form. The appropriate fee must accompany each application and be paid by check, draft, or money order.

(d) *Issuance.* NMFS may issue a dealer permit or preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure or in violation of any regulation in this subpart. No preapproval will be issued for *Dissostichus* species without verifiable documentation, to include VMS reports with vessel location and messages, of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species, except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

(e) *Duration.* A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended. A preapproval is valid until the product

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is imported (and re-exported, if applicable).

(f) *Transfer*. A permit issued under this section is not transferable or assignable.

(g) *Changes in information*—(1) Pending applications. Applicants for permits and preapproval under this section must report in writing to NMFS any change in the information submitted in their permit and preapproval applications. The processing period for the application may be extended as necessary to review and consider the change.

(2) Issued permits and preapprovals. Any entity issued a permit or preapproval under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would result in a change in the receipt or importation authorized by the preapproval, such as harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new preapproval.

(h) *Revision, suspension, or revocation*. A permit or preapproval issued under this section may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in a permit or preapproval application voids the application, permit, or preapproval as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(i) *Exception*. Preapproval is not required for shipments of fresh *Dissostichus* species. A report of a shipment of fresh *Dissostichus* species must be completed and submitted to NMFS within 24 hours following import.

(j) *SVD*. Dealer permits will not be issued for *Dissostichus* spp. offered for sale or other disposition under a Specially Validated DCD.

(k) *Registered agent*. Foreign entities shall, as a condition of possessing a dealer permit, designate and maintain a registered agent within the United States that is authorized to accept service of process on behalf of that en-

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tity. Foreign based importers of record may identify to NMFS the registered agent identified for Customs Service purposes.

[68 FR 23228, May 1, 2003. Redesignated and amended at 72 FR 48510, 48511, Aug. 23, 2007; 75 FR 18112, Apr. 9, 2010]

### § 300.115 Appointment of a designated representative.

(a) All holders of permits authorizing fishing in subarea 48.3 must appoint a designated representative in the United States.

(b) The designated representative will be notified of closures under § 300.111 and must transmit this information to the vessel on the grounds.

(c) The designated representative may receive catch reports from the vessel and transmit the reports to NMFS in writing.

[61 FR 35550, July 5, 1996. Redesignated at 72 FR 48510, Aug. 23, 2007]

### § 300.116 Requirements for a vessel monitoring system for U.S. vessels.

(a) *Requirement for use*. Within 30 days after NMFS publishes in the FEDERAL REGISTER a list of approved transmitting units and associated communications service providers for the AMLR fishery, an owner or operator of a vessel that has been issued a harvesting permit for AMLR must ensure that such vessel has a NMFS-approved, operating VMS on board when on any fishing trip involving the harvesting of AMLR. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS*. Only a VMS that has been approved by NMFS for use in the AMLR fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

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(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of AMLR, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

(f) *Installation and operation of the VMS.* NMFS has authority over the installation and operation of the VMS unit. NMFS may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by NMFS.

[72 FR 48511, Aug. 23, 2007, as amended at 75 FR 18113, Apr. 9, 2010]

### § 300.117 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Reduce to possession or attempt to reduce to possession any AMLRs without a permit for such activity as required by § 300.112.

(b) Import into or export from the United States any AMLRs taken by vessels without a permit to harvest those resources as required by § 300.112 (a)(1), or without applicable catch documentation as required by § 300.107 (c)(1), or without a dealer permit as required by § 300.113 (a)(1), or in violation of the terms and conditions for such import or export as specified on the permit.

(c) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in vio-

lation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any AMLR that he or she knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this subpart, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting an inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to CCAMLR inspectors.

(g) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector in the conduct of any boarding or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in a closed area.

(l) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in management measures issued pursuant to § 300.111.

(m) Use any means or device that would reduce the size or obstruct the opening of the trawl meshes specified in management measures issued pursuant to § 300.111.

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(n) Possess fish in violation of the catch limit specified in management measures issued pursuant to § 300.111.

(o) Discard netting or other substances in the Convention Area in violation of § 300.109.

(p) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

(q) Provide incomplete or inaccurate information about the harvest, transshipment, landing, import or re-export of applicable species on any document required under this subpart.

(r) Receive AMLRs from a vessel without a dealer or harvesting permit issued under this subpart.

(s) Import *Dissostichus* spp. with a Specially Validated DCD.

(t) Import shipments of frozen *Dissostichus* spp. without a preapproval issued under § 300.114.

(u) Assault, resist, oppose, impede, intimidate, harass, bribe, or interfere with an observer.

(v) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(w) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

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

(y) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(z) Fish for or process fish without observer coverage required under § 300.113.

(aa) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(bb) *Vessel monitoring systems.* (1) Use any vessel registered to an AMLR harvesting permit to conduct fishing operations unless that vessel carries an OLE type-approved mobile transceiver unit and complies with the requirements described in this subpart.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified in this subpart.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this subpart.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this subpart.

(5) Fail to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this subpart.

(6) Register a VMS transceiver unit registered to more than one vessel at the same time.

(7) Connect or leave connected additional equipment to a VMS unit without the prior approval of the OLE.

(8) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or communication service provider.

(9) Fail to use real-time C-VMS port-to-port on board U.S. vessels harvesting AMLR in the Convention Area.

(cc) Fail to use the mitigation measures required in the course of longline fishing or longline fishing research in the Convention Area to minimize the incidental mortality of seabirds.

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(dd) Fail to use the mitigation measures required in the Convention Area to minimize the incidental mortality of seabirds and marine mammals in the course of trawl fishing.

(ee) Set longlines in Subareas 48.6, 88.1 and 88.2 Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2 during daylight hours without following the CCAMLR protocol designed to mitigate seabird interactions.

(ff) Trawl for krill in Convention Area fisheries without a seal excluder device.

(gg) Harvest any AMLR in Convention waters without a harvesting permit required by this subpart.

(hh) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species unless the *Dissostichus* species was harvested during a fishing trip that began prior to September 24, 2007.

[61 FR 35550, July 5, 1996, as amended at 65 FR 30017, May 10, 2000; 68 FR 23229, May 1, 2003. Redesignated and amended at 72 FR 48510, 48512, Aug. 23, 2007; 75 FR 18113, Apr. 9, 2010]

### § 300.118 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) *Access and records.* (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

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

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(b) *Reports by non-inspectors.* All scientists, fishermen, and other non-inspectors present in the Convention area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation and management measures observed in the Convention area to the Office of Ocean Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

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



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(d) *Disposition of resources denied entry.* [Reserved]

[61 FR 35550, July 5, 1996, as amended at 65 FR 30017, May 10, 2000. Redesignated at 72 FR 48510, Aug. 23, 2007]

**§ 300.119 Penalties.**

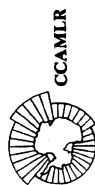
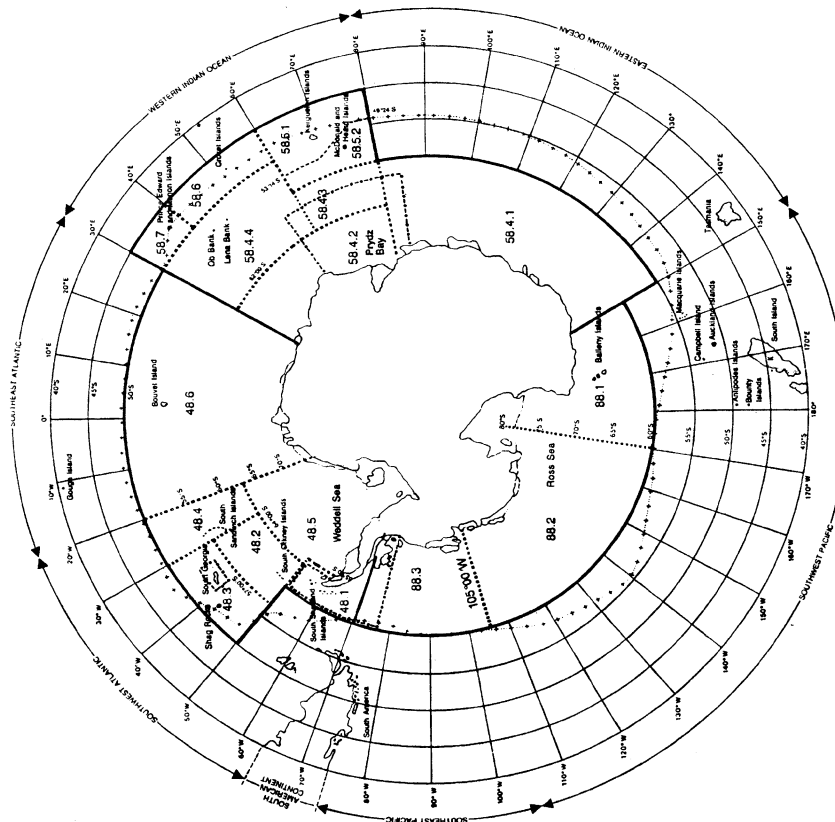
Any person or harvesting vessel found to be in violation of the Act, this

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subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.

[61 FR 35550, July 5, 1996. Redesignated at 72 FR 48510, Aug. 23, 2007]

FIGURE 1 TO SUBPART G OF PART 300—BOUNDARIES OF THE STATISTICAL REPORTING AREA IN THE SOUTHERN OCEAN

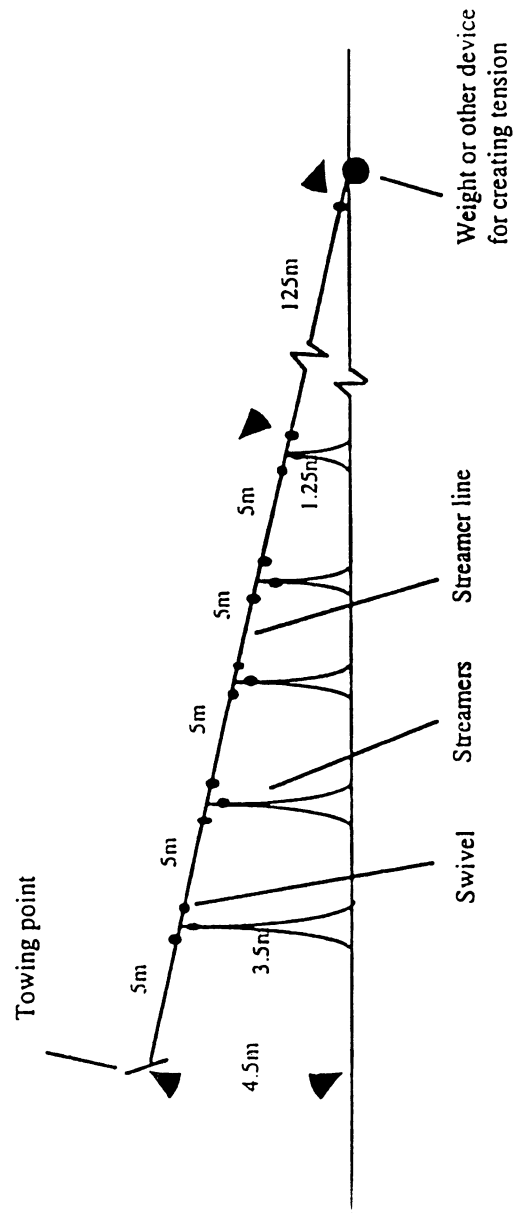


Boundaries of the  
Statistical Reporting  
Area in the Southern Ocean

- STATISTICAL AREA  
— ZONE STATISTIQUE  
— AREA ESTADÍSTICA
- STATISTICAL SUBAREA  
--- SUB-ZONE STATISTIQUE  
--- SUBAREA ESTADÍSTICA
- ANTARCTIC CONVERGENCE  
→ CONVERGENCE ANTIARCTIQUE  
→ CONVERGENCIA ANTÁRTICA
- CONTINENT ISLAND  
— ÎLE CONTINENTALE  
— ISLA CONTINENTAL
- ARCHIPELAGO / REGION  
--- PAROIKI KOMPLEXIKHTI / REGION  
--- REGION DE ESTUDIO INTEGRADO

Boundaries of the Statistical Reporting Area in the Southern Ocean

FIGURE 2 TO SUBPART G OF PART 300—THE USE OF STREAMER LINES TO MINIMIZE THE INCIDENTAL MORTALITY OF SEABIRDS IN THE COURSE OF LONGLINE FISHING OR LONGLINE FISHING RESEARCH OPERATIONS IN THE CONVENTION AREA



The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area.

## Subpart H—Vessels of the United States Fishing in Colombian Treaty Waters

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

### § 300.120 Purpose.

This subpart implements fishery conservation and management measures as provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120) (Treaty).

### § 300.121 Definitions.

In addition to the terms defined in § 300.2, the Magnuson-Stevens Act, and § 600.10 of this title, and in the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson-Stevens Act, or the Treaty, the definition in this section shall apply.

*Conch* means *Strombus gigas*.

*Factory vessel* means a vessel that processes, transforms, or packages aquatic biological resources on board.

*Lobster* means one or both of the following:

(1) Smoothtail lobster, *Panulirus laeviscauda*.

(2) Caribbean spiny lobster or spiny lobster, *Panulirus argus*.

*Regional Administrator* means the Administrator of the Southeast Region, or a designee.

*Science and Research Director* means the Director, Southeast Fisheries Science Center.

*Treaty waters* means the waters of one or more of the following:

(1) *Quita Sueno*, enclosed by latitudes 13°55'N. and 14°43'N. between longitudes 80°55'W. and 81°28'W.

(2) *Serrana*, enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22'N. lat., 80°20'W. long.

(3) *Roncador*, enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35'N. lat., 80°05'W. long.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

### § 300.122 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § 600.705 of this title and paragraph (b) of this section. Particular note should be made to the reference in § 600.705 to the applicability of title 46 U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transiting the EEZ with such species aboard.

### § 300.123 Certificates and permits.

(a) *Applicability*. An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Administrator.

(b) *Application for certificate/permit*. (1) An application for a permit must be submitted and signed by the vessel's owner. An application may be submitted at any time, but should be submitted to the Regional Administrator not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Administrator by October 1.

(2) An applicant must provide the following:

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

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner or, if the owner is a corporation or partnership, of the responsible corporate officer or general partner.

(iv) Principal port of landing of fish taken from treaty waters.

(v) Type of fishing to be conducted in treaty waters.

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

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

(c) *Issuance.* (1) The Regional Administrator will request a certificate from the Republic of Colombia if:

(i) The application is complete.

(ii) The applicant has complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Administrator's notification, the application will be considered abandoned.

(3) The Regional Administrator will issue a permit as soon as the certificate is received from the Republic of Colombia.

(d) *Duration.* A certificate and permit are valid for the calendar year for which they are issued, unless the permit is revoked, suspended, or modified under subpart D of 15 CFR part 904.

(e) *Transfer.* A certificate and permit issued under this section are not transferable or assignable. They are valid only for the fishing vessel and owner for which they are issued.

(f) *Display.* A certificate and permit issued under this section must be carried aboard the fishing vessel while it is in treaty waters. The operator of a fishing vessel must present the certificate and permit for inspection upon request of an authorized officer or an enforcement officer of the Republic of Colombia.

(g) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

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

(i) *Replacement.* A replacement certificate or permit may be issued upon request. Such request must clearly state the reason for a replacement certificate or permit.

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(j) *Change in application information.*

The owner of a vessel with a permit must notify the Regional Administrator within 30 days after any change in the application information required by paragraph (b)(2) of this section. The permit is void if any change in the information is not reported within 30 days.

### § 300.124 Recordkeeping and reporting.

(a) *Arrival and departure reports.* The operator of each vessel of the United States for which a certificate and permit have been issued under § 300.123 must report by radio to the Port Captain, San Andres Island, voice radio call sign “Capitania de San Andres,” the vessel's arrival in and departure from treaty waters. Radio reports must be made on 8222.0 kHz or 8276.5 kHz between 8:00 a.m. and 12 noon, local time (1300–1700, Greenwich mean time) Monday through Friday.

(b) *Catch and effort reports.* Each vessel of the United States must report its catch and effort on each trip into treaty waters to the Science and Research Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received no later than 7 days after the end of each fishing trip.

### § 300.125 Vessel identification.

(a) *Official number.* A vessel with a permit issued pursuant to § 300.123, when in treaty waters, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. The official number must be permanently affixed to or painted on the vessel and must be in block arabic numerals in contrasting color to the background at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair.

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any

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other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

### § 300.126 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this title and the prohibited acts specified in § 300.4, it is unlawful for any person to do any of the following:

(a) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in § 300.123(a) and (f).

(b) Fail to notify the Regional Administrator of a change in application information, as specified in § 300.123(j).

(c) Fail to report a vessel's arrival in and departure from treaty waters, as required by § 300.124(a).

(d) Falsify or fail to display and maintain vessel identification, as required by § 300.125.

(e) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in § 300.127.

(f) Operate a factory vessel in treaty waters, as specified in § 300.130(a).

(g) Use a monofilament gillnet in treaty waters, as specified in § 300.130(b).

(h) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in § 300.130(c).

(i) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 300.130(d).

(j) Possess conch smaller than the minimum size limit, as specified in § 300.131(a).

(k) Fish for or possess conch in the closed area or during the closed season, as specified in § 300.131(b) and (c).

(l) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in § 300.132(a).

(m) Possess a lobster smaller than the minimum size, as specified in § 300.132(b).

(n) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in § 300.132(a) and (b).

### § 300.127 Facilitation of enforcement.

(a) The provisions of § 600.730 of this title and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this subpart.

### § 300.128 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson-Stevens Act or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this title, to 15 CFR part 904, and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this subpart to leave treaty waters.

### § 300.129 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

### § 300.130 Vessel and gear restrictions.

(a) *Factory vessels.* Factory vessels are prohibited from operating in treaty waters.

(b) *Monofilament gillnets.* A monofilament gillnet made from nylon or similar synthetic material are prohibited from being used in treaty waters.

(c) *Tanks and air hoses.* Autonomous or semiautonomous diving equipment (tanks or air hoses) are prohibited from being used to take aquatic biological resources in treaty waters.

(d) *Trap requirements.* A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no

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smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

(e) *Poisons and explosives.* [Reserved]

### § 300.131 Conch harvest limitations.

(a) *Size limit.* The minimum size limit for possession of conch in or from treaty waters is 7.94 oz (225 g) for an uncleaned meat and 3.53 oz (100 g) for a cleaned meat.

(b) *Closed area.* The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) *Closed season.* During the period July 1 through September 30 of each year, the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

### § 300.132 Lobster harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) *Size limit.* The minimum size limit for possession of lobster in or from treaty waters is 5.5 inches (13.97 cm), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

## Subpart I—United States-Canada Fisheries Enforcement

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

### § 300.140 Purpose and scope.

This subpart implements the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990 (Agreement), allowing each party to the Agreement to take appropriate measures, consistent with international law, to prevent its

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nationals, residents and vessels from violating those national fisheries laws and regulations of the other party. This subpart applies, except where otherwise specified in this subpart, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Magnuson-Stevens Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this subpart, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

### § 300.141 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson-Stevens Act and the Agreement, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson-Stevens Act, or the Agreement, the definition in this section applies.

*Applicable Canadian fisheries law* means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

*Authorized officer of Canada* means any fishery officer, protection officer, officer of the Royal Canadian Mounted Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

*Canadian fishing vessel* means a fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principal place of business in Canada; or

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(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.

*Waters subject to the fisheries jurisdiction of Canada* means the internal waters, territorial sea, and the zone that Canada has established, extending 200 nautical miles from its coasts, in which it exercises sovereign rights for the purpose of exploration, exploitation, conservation and management of living marine resources, to the extent recognized by the United States.

### § 300.142 Prohibitions.

The prohibitions in this section apply within waters subject to the fisheries jurisdiction of Canada and during hot pursuit therefrom by an authorized officer of Canada. It is unlawful for any national or resident of the United States, or any person on board a vessel of the United States, or the owner or operator of any such vessel, to do any of the following:

(a) Engage in fishing in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(b) Take or retain fish in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(c) Be on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, without stowing all fishing gear on board either:

(1) Below deck, or in an area where it is not normally used, such that the gear is not readily available for fishing; or

(2) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; unless the vessel has been authorized by the Government of Canada to fish in the particular location within waters subject to the fisheries jurisdiction of Canada in which it is operating.

(d) While on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, fail to respond to any inquiry from an authorized officer of Canada regarding the vessel's name, flag state, location, route or destination,

and/or the circumstances under which the vessel entered such waters.

(e) Violate the Agreement, any applicable Canadian fisheries law, or the terms or conditions of any permit, license or any other authorization granted by Canada under any such law.

(f) Fail to comply immediately with any of the enforcement and boarding procedures specified in § 300.143.

(g) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of Canada, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(h) Refuse to allow an authorized officer of Canada to board a vessel for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(i) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of Canada in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(j) Make any false statement, oral or written, to an authorized officer of Canada in response to any inquiry by that officer in connection with enforcement of any applicable Canadian fisheries law.

(k) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this subpart such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(l) Attempt to do any of the foregoing.

### § 300.143 Facilitation of enforcement.

(a) *General.* Persons aboard fishing vessels subject to this subpart must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft,



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to stop the vessel, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this subpart. All of the provisions of § 300.5 regarding communications, boarding, and signals apply to this subpart. For purposes of this subpart, authorized officer in § 305 means an authorized officer of the United States or Canada. (See paragraph (b) of this section for specific requirements for complying with signals and instructions issued by an authorized officer of Canada.)

(b) *Canadian signals.* In addition to signals set forth in § 300.5, persons aboard fishing vessels subject to this subpart must immediately comply with the following signals by an authorized officer of Canada.

(1) Authorized officers of Canada use the following signals to require fishing vessels to stop or heave to:

(i) The hoisting of a rectangular flag, known as the International Code Flag “L”, which is divided vertically and horizontally into quarters and colored so that:

(A) The upper quarter next to the staff and the lower quarter next to the fly are yellow; and

(B) The lower quarter next to the staff and the upper quarter next to the fly are black;

(ii) The flashing of a light to indicate the International Morse Code letter “L”, consisting of one short flash, followed by one long flash, followed by two short flashes (. — . .); or

(iii) The sounding of a horn or whistle to indicate the International Morse Code letter “L”, consisting of one short blast, followed by one long blast, followed by two short blasts (. — . .).

(2) Authorized officers of Canada use the following signals to require a fishing vessel to prepare to be boarded:

(i) The hoisting of flags representing the International Code Flag “SQ3”; or

(ii) The flashing of a light, or the sounding of a horn or whistle, to indicate the International Morse Code Signal “SQ3” (. . . — . — . . . —).

## § 300.144 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the

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Agreement or this subpart, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Magnuson-Stevens Act, part 600 of this title, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

## Subpart J—U.S. Nationals Fishing in Russian Fisheries

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

### § 300.150 Purpose.

This subpart regulates U.S. nationals fishing in the Russian fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

### § 300.151 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson-Stevens Act, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2 or the Magnuson-Stevens Act, the definition in this section shall apply.

*Affiliates* means two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or

(2) A third party controls or has power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.

*Agreement* means the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

*Embassy of the Russian Federation* means the Fisheries Attache of the embassy located in Washington, D.C.

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

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*Fishing or to fish* means any activity that does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

*Operator*, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel's fishing operation, or both.

*Owner*, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel, any officer, director, manager, controlling shareholder of any entity described in this definition, any agent designated as such by any person described in this definition, and any affiliate of any person described in this definition.

*Processing* means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

*Regional Administrator* means Administrator of the Alaska Region, or a designee.

*Relevant laws and regulations of the Russian Federation* means those Russian laws and regulations that concern fishing for fishery resources over which Russia exercises sovereign rights or fishery management authority.

*Russian and Federation* mean the Russian Federation, its government, or any organ or entity of its government.

*Russian continental shelf or continental shelf of Russia* means the seabed and subsoil of the submarine areas over which, consistent with international law, Russia exercises sovereign rights.

*Russian Economic Zone or Russian EZ* means a zone of waters off the coast of Russia beyond and adjacent to the Russian territorial sea extending a distance of up to 200 nautical miles from

the baseline from which the territorial sea is measured, within which, consistent with international law, Russia has sovereign rights over the fishery resources.

*Russian Federation or Russia* means the governing entity that succeeded the Union of Soviet Socialist Republics, and that is the successor party to the Agreement of May 31, 1988.

*Russian fisheries, Russian fishery resources, or fishery resources over which Russia exercises sovereign rights or fishery management authority* means fishery resources within the Russian EZ, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EZ or beyond any exclusive economic zone or its equivalent.

*Scouting* means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

*Support* means any operation by a vessel assisting fishing by another vessel, including—

(1) Transferring or transporting fish or fish products; or

(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

### § 300.152 Procedures.

(a) *Application for annual permits.* U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS Headquarters.

(b) *Other application information.* Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than

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10 vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(c) *Review of Applications.* NMFS will review each application, and, if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) *Direct Communication.* U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so. Owners and operators should make direct contact and work with Russian industry and government authorities.

#### § 300.153 Permit issuance.

(a) *Acceptance.* Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner is prohibited from transferring the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS Headquarters under § 300.152 within 7 calendar days of the change.

(b) *Copies.* The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS Headquarters.

(c) *Validity.* Any permit issued by the Russian Federation with respect to a vessel subject to this subpart will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in § 300.152(b)(1).

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section.

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section. The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; failure to submit to NMFS any permit copy required by paragraph (b) of this section or any other information or report required by any other provision of this subpart; or the failure to pay required permit fees.

(d) *Russian-imposed sanctions.* (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

#### § 300.154 Recordkeeping and reporting.

(a) *General.* The owner and operator of a vessel subject to this subpart are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this subpart must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

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(b) *Vessel permit abstract report.* (1) The owner and operator of a vessel subject to this subpart must submit to NMFS Headquarters a permit abstract report containing the following information:

- (i) Vessel name.
  - (ii) Russian Federation permit number.
  - (iii) Duration of permit (e.g., 1/1/91-12/31/91).
  - (iv) Authorized areas of fishing operations in geographic coordinates.
  - (v) Authorized catch quota in tons.
  - (vi) Authorized fishing gear.
  - (vii) Type of permit (e.g., catcher).
- (2) The report must be faxed to (301) 713-2313 within 5 calendar days of receipt of the Russian permit.

(c) *Activity reports.* The owner and operator of a vessel subject to this subpart must submit to the Regional Administrator by telefax to (907) 586-7313, the following reports:

(1) *Depart Report* (Action code DEPART). At least 24 hours before the vessel departs from the EEZ for the Russian EZ, NMFS must receive the following information:

(i) The date (month and day), and time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will depart the EEZ for the Russian EZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the vessel at the time it will depart the EEZ.

(2) *Return Report* (Action code RETURN). At least 24 hours before a vessel that has been in the Russian EZ enters the EEZ, NMFS must receive the following information:

(i) The date (month and day), time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will enter the EEZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EZ, U.S. EEZ, or other) in which such fish products were harvested or received.

(3) All reports must specify: The appropriate action code ("DEPART" or "RETURN"); the vessel's name and international radio call sign (IRCS); the sender's name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. A list of species and product codes may be obtained from the Regional Administrator.

(d) *Recordkeeping.* The owner and operator of a vessel subject to this subpart must retain all copies of all reports required by this subpart on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records on board the vessel.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

### § 300.155 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in § 300.153(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Russian law.* U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) *Protection of marine mammals.* U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established

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by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of, and any person aboard, any U.S. vessel subject to this subpart, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this subpart must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of its relevant laws and regulations.

(4) The operator of, and any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing records, and catch for purposes of enforcing the Magnuson-Stevens Act, the Agreement, and this subpart.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EZ or for Russian fishery resources to which a Russian observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer.

(2) Provide to the observer, at no cost to the observer or the Russian Federa-

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tion, the courtesies and accommodations provided to ship's officers.

(3) Cooperate with the observer in the conduct of his or her official duties.

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

### § 300.156 Prohibited acts.

In addition to the prohibited acts specified at § 300.4, it shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation.

(b) To violate the provisions, conditions, and restrictions of an applicable permit.

(c) To violate the relevant laws and regulations of Russia.

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 300.155 (c).

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 300.155 (d).

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this subpart for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation.

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation.

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation.

(i) To refuse or fail to allow a Russian observer to board a vessel subject to this subpart while fishing in the Russian EZ, or for Russian fishery resources.

(j) To fail to provide to a Russian observer aboard a vessel fishing in the

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Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship's officers.

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this subpart.

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel.

(m) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson-Stevens Act, or this subpart.

(n) To enter the Russian EZ to fish unless a permit application has been submitted through NMFS to the competent authorities of the Russian Federation by the U.S. Department of State for such vessel as provided in this subpart.

(o) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this subpart without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel.

(p) To falsify, or fail to report to NMFS, any change in the information contained in a permit application subject to this subpart within 7 calendar days of such change.

(q) To attempt to do, cause to be done, or aid and abet in doing, any of the foregoing.

(r) To violate any other provision of this subpart.

### **§ 300.157 Penalties.**

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of § 300.156 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson-Stevens Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable

laws and regulations of the United States.

## **Subpart K—Transportation and Labeling of Fish or Wildlife**

AUTHORITY: 16 U.S.C. 3371–3378.

### **§ 300.160 Requirement for marking of containers or packages.**

Except as otherwise provided in this subpart, all persons are prohibited from importing, exporting, or transporting in interstate commerce any container or package containing any fish or wildlife (including shellfish) unless each container or package is conspicuously marked on the outside with both the name and address of the shipper and consignee and an accurate list of its contents by species and number of each species.

### **§ 300.161 Alternatives and exceptions.**

(a) The requirements of § 300.160 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package containing fish or wildlife with the word “fish” or “wildlife” as appropriate for its contents, or with the common name of its contents by species, and

(ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment that accurately states the name and address of the shipper and consignee, states the total number of packages or containers in the shipment, and for each species in the shipment specifies: The common name that identifies the species (examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer); and the number of that species (or other appropriate measure of quantity such as gross or net weight). The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner that makes it readily accessible for inspection; or

(2) Affixing the shipper's wildlife import/export license number preceded by “FWS” on the outside of each container or package containing fish or

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wildlife if the shipper has a valid wildlife import/export license issued under authority of part 14 of this title. For each shipment marked in accordance with this paragraph (a)(2), the records maintained under § 14.93(d) of this title must include a copy of the invoice, packing list, bill of lading, or other similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section, provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section; or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of § 300.160 of chapter III of this title do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pursuant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.

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### Subpart L—Pacific Albacore Tuna Fisheries

**AUTHORITY:** Sec. 401, Pub. L. 108-219, 118 Stat. 616 (16 U.S.C. 1821 note).

**SOURCE:** 69 FR 31535, June 4, 2004, unless otherwise noted.

#### § 300.170 Purpose and scope.

The regulations in this subpart govern fishing by U.S. vessels in waters under the fisheries jurisdiction of Canada pursuant to the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Regulations governing fishing by Canadian vessels in waters under the fisheries jurisdiction of the United States pursuant to this Treaty as amended in 2002 are found at § 600.530 of chapter VI of this title.

#### § 300.171 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10 of Chapter VI of this title, the terms used in this subpart have the following meanings:

*Fishing under the Treaty as amended in 2002* means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of Canada seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

*Regional Administrator* means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

*Reporting Office* means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

*Treaty* means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

#### § 300.172 Vessel list.

The “vessel list” is the list of U.S. vessels that are authorized to fish

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under the Treaty as amended in 2002. Only a vessel on the list for at least 7 days may engage in fishing in Canadian waters under the Treaty as amended in 2002. The owner of any U.S. vessel that wishes to be eligible to fish for albacore tuna under the Treaty as amended in 2002 must provide the Regional Administrator or his designee with the vessel name, the owner's name and address, phone number where the owner can be reached, the USCG documentation number (or state registration number if not documented), and vessel operator (if different from the owner) and his or her address and phone number. On the date that NMFS receives a request that includes all the required information, NMFS will place the vessel on the annual vessel list. NMFS will notify fishermen by a confirmation letter or email of the date the vessel was placed on the list. Because the vessel list will revert to zero vessels on December 31 of each year, the required information must be provided in the manner specified on an annual basis.

[72 FR 19123, Apr. 17, 2007]

### **§ 300.173 Vessel identification.**

Each U.S. vessel fishing under the Treaty must be marked for identification purposes, as follows:

(a) A vessel used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with the requirements at §§ 300.14 and 300.217.

(b) A vessel not used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with either:

(1) Sections 300.14 and 300.217, or

(2) The vessel's name and U.S. Coast Guard Documentation number (or if not documented, the state registration number) followed by the letter U must be prominently displayed where they are clearly visible both from the air and from a surface vessel. Numerals and the letter U must meet the size requirements of § 660.704 of this title. Markings must be legible and of a color that contrasts with the background.

[76 FR 73520, Nov. 29, 2011]

### **§ 300.174 Logbook reports.**

The owner of any U.S. vessel that fishes for albacore tuna in Canadian waters under the Treaty as amended in 2002 must maintain and submit to the Regional Administrator a logbook of catch and effort of such fishing. The logbook form will be provided to the vessel owner as soon as practicable after the request to be placed on the list of vessels. The logbook must be submitted to the Regional Administrator within 15 days of the end of a trip, regardless of whether the trip ends by reentry to U.S. waters or entry to Canada's territorial sea, other Canadian waters in which fishing is not permitted, or a Canadian port. If the departure is due to exit to the high seas, the vessel operator must submit the logbook within 7 days of its next landing.

### **§ 300.175 Hail-in and hail-out reports.**

(a) The operator of any U.S. vessel that wishes to engage in fishing in waters under the fisheries jurisdiction of Canada must file a hail-in report to the Reporting Office at least 24 hours prior to engaging in fishing in such waters.

(b) The operator of a U.S. vessel that has been fishing under the Treaty as amended in 2002 must file a hail-out report to the Reporting Office within 24 hours of departing waters under the fisheries jurisdiction of Canada.

### **§ 300.176 Prohibitions.**

It is prohibited for the owner or operator of a U.S. fishing vessel to:

(a) Engage in fishing in waters under the fisheries jurisdiction of Canada if:

(1) The vessel has not been on the list of fisheries pursuant to § 300.172 for at least 7 days;

(2) The vessel is not clearly marked as required under § 300.173;

(3) The vessel operator has not filed a hail-in report with the Reporting Office as required under § 300.175(a); or

(4) The Regional Administrator has announced that the U.S. limit on fishing under the Treaty as amended in 2002 has been reached.

(b) Fail to maintain and submit logbook records of catch and effort statistics as required under § 300.174;



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(c) Fail to report an exit from waters under the fisheries jurisdiction of Canada as required by § 300.175(b).

### Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

AUTHORITY: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

SOURCE: 69 FR 67277, Nov. 17, 2004, unless otherwise noted.

#### § 300.180 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), Tuna Conventions Act of 1950, and Magnuson-Stevens Act. The regulations implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean and of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean, so far as they affect vessels and persons subject to the jurisdiction of the United States.

#### § 300.181 Definitions.

*Atlantic bluefin tuna* means the species *Thunnus thynnus* found in the Atlantic Ocean.

*BCD tag* means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a BCD.

*Bigeye tuna* means the species *Thunnus obesus* found in any ocean area.

*Bluefin Tuna Catch Document (BCD)* means a bluefin tuna catch document issued by a nation implementing the ICCAT bluefin tuna catch documentation program.

*BSD tag* means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a bluefin tuna statistical document (BSD).

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*CBP* means the U.S. Customs and Border Protection.

*CCSBT* means the Commission for the Conservation of Southern Bluefin Tuna established pursuant to the Convention for the Conservation of Southern Bluefin Tuna.

*Consignment document* means either an ICCAT Atlantic BCD or a catch document issued by a nation to comply with the ICCAT BCD program; or an ICCAT, IATTC, IOTC, or CCSBT statistical document or a statistical document issued by a nation to comply with such statistical document programs.

*Consignment documentation programs* means the ICCAT, IOTC, IATTC or CCSBT catch document or statistical document programs.

*Customs territory of the United States* has the same meaning as in 19 CFR 101.1 and includes only the States, the District of Columbia, and Puerto Rico.

*Dealer tag* means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna sold to a dealer permitted under § 635.4 of this title as required under § 635.5(b) of this title.

*Entered for consumption* has the same meaning as in 19 CFR 141.0a(f) and generally refers to the filing of an entry summary for consumption with customs authorities, in proper form, with estimated duties attached.

*Entry for consumption*, for purposes of this subpart, has the same meaning as entry for consumption, withdrawal from warehouse for consumption, or entry for consumption of merchandise from a foreign trade zone, as provided under 19 CFR parts 101.1, 141, 144, and 146. For purposes of this subpart, “entry for consumption” generally means an import into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, for domestic use, that is classified for customs purposes in the “consumption” category (entry type codes 00–08) or withdrawal from warehouse or foreign trade zone for consumption category (entry type codes 30–34 and 38). For purposes of this subpart, HMS destined from one foreign country to another, which transits the Customs territory of the United States or the separate customs territory of a

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U.S. insular possession, and is not classified as an entry for consumption upon release from CBP or other customs custody, is not an entry for consumption under this definition.

*Entry number*, for purposes of this subpart, means the unique number/identifier assigned by customs authorities for each entry into a customs territory. For CBP, the entry number is assigned at the time of filing an entry summary (CBP Form 7501 or equivalent electronic filing) for entries into the Customs territory of the United States.

*Export*, for purposes of this subpart, means to effect exportation.

*Exportation* has the same general meaning as 19 CFR 101.1 and generally refers to a severance of goods from the mass of things belonging to one country with the intention of uniting them to the mass of things belonging to some foreign country. For purposes of this subpart, a shipment between the United States and its insular possessions is not an export.

*Exporter*, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in Part 30 of title 15 of the CFR. An exporter is subject to the requirements of this subpart, even if exports are exempt from statistical reporting requirements under Part 30 of title 15 of the CFR.

*Finlet* means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

*Fish or fish products regulated under this subpart* means bluefin tuna, frozen bigeye tuna, southern bluefin tuna and swordfish and all such products of these species, except parts other than meat (e.g., heads, eyes, roe, guts, and tails), and shark fins.

*IATTC* means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

*ICCAT* means the International Commission for the Conservation of Atlantic Tunas established pursuant to the

International Convention for the Conservation of Atlantic Tunas.

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States. Import, for purposes of this subpart, does not include any activity described in the previous sentence with respect to fish caught in the exclusive economic zone or by a vessel of the United States. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice-versa, are not considered imports.

*Importer*, for purposes of this subpart, means the principal party responsible for the import of product into a country. For imports into the United States, and for purposes of this subpart, "importer" means the consignee as identified on entry documentation or any authorized, equivalent electronic medium required for release of shipments from the customs authority of the United States or the separate customs territory of a U.S. insular possession. If a consignee is not declared, then the importer of record is considered to be the consignee.

*Insular possession of the United States or U.S. insular possession*, for purposes of this subpart, means the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and other possessions listed under 19 CFR 7.2, that are outside the customs territory of the United States.

*Intermediate country* means a country that exports to another country HMS previously imported as an entry for consumption by that nation. A shipment of HMS through a country on a through bill of lading, or in another manner that does not enter the shipment into that country as an entry for consumption, does not make that country an intermediate country under this definition.

*IOTC* means the Indian Ocean Tuna Commission established pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission approved by the Food and Agriculture

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Organization (FAO) Council of the United Nations.

*Pacific bluefin tuna* means the species *Thunnus orientalis* found in the Pacific Ocean.

*Permit holder*, for purposes of this subpart, means, unless otherwise specified, a person who obtains a trade permit under § 300.182.

*Re-export*, for purposes of this subpart, means the export of goods that were previously entered for consumption into the customs territory of a country.

*RFMO*, as defined under this subpart, means regional fishery management organization, including CCSBT, IATTC, ICCAT, or IOTC.

*Separate customs territory of a U.S. insular possession* means the customs territory of a U.S. insular possession when that possession's customs territory is not a part of the Customs territory of the United States.

*Shark fin*, for purposes of this subpart, means any fin removed from a shark, which is an animal of the Linnaean taxonomic superorder Selachimorpha, subclass Elasmobranchii, class Chondrichthyes.

*Southern bluefin tuna* means the species *Thunnus maccoyii* found in any ocean area.

*Statistical document* means an ICCAT, IATTC, IOTC, or CCSBT statistical document, or a statistical document issued by a nation to comply with such statistical document programs.

*Statistical document program* means either the ICCAT, IOTC, IATTC or CCSBT statistical document program.

*Swordfish* means the species *Xiphias gladius* that is found in any ocean area.

*Tag* means either a dealer tag or a BCD tag.

*Trade permit* means the HMS international trade permit under § 300.182.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31385, June 2, 2008]

### § 300.182 HMS international trade permit.

(a) *General*. An importer, entering for consumption fish or fish products regulated under this subpart from any ocean area into the United States, or an exporter exporting or re-exporting such product, must possess a valid trade permit issued under this section.

Importation of fish or fish products regulated under this subpart by non-resident corporations is restricted to those entities authorized under 19 CFR 141.18. A resident agent or resident corporate surety provider, as specified under 19 CFR 141.18, must possess a valid trade permit when acting on behalf of a nonresident corporation when entering for consumption, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area.

(b) *Application*. A person must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be completed, signed by the applicant, and submitted with required supporting documents, at least 30 days before the date on which the applicant wants to have the permit made effective. Application forms and instructions for their completion are available from NMFS.

(c) *Issuance*. NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Duration*. Any permit issued under this section is valid for the period specified on it, unless suspended or revoked.

(e) *Alteration*. Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement*. NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer*. A permit issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) *Inspection*. The permit holder must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

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(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 30 days after any change in the information contained in an application submitted under this section, the permit holder must report the change to NMFS in writing. If a change in permit information is not reported within 30 days, the permit is void as of the 31<sup>st</sup> day after such change.

(l) *Renewal.* Persons must apply annually for a trade permit issued under this section. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before the permit expiration date to avoid a lapse of permitted status. NMFS will renew a permit provided that: the application for the requested permit is complete; all reports required under the Magnuson-Stevens Act, ATCA, and the Tuna Conventions Act of 1950 have been submitted, including those required under §§300.183, 300.185, 300.186, and 300.187 and §635.5 of this title; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

[69 FR 67277, Nov. 17, 2004, as amended at 71 FR 58163, Oct. 2, 2006; 73 FR 31385, June 2, 2008]

### § 300.183 Permit holder reporting and recordkeeping requirements.

(a) *Biweekly reports.* Any person required to obtain a trade permit under §300.182 must submit to NMFS, on

forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of fish and fish products regulated under this subpart except shark fins.

(1) The report required to be submitted under this paragraph (a) must be received within 10 days after the end of each biweekly reporting period in which fish or fish products regulated under this subpart except shark fins were entered for consumption, exported, or re-exported. The bi-weekly reporting periods are the first day to the 15<sup>th</sup> day of each month, and the 16<sup>th</sup> day to the last day of each month.

(2) Each report must specify accurately and completely the requested information for each consignment of fish or fish products regulated under this subpart, except shark fins, that is entered for consumption, exported, or re-exported.

(3) A biweekly report is not required for export consignments of bluefin tuna when the information required on the biweekly report has been previously supplied on a biweekly report submitted under §635.5(b)(2)(i)(B) of this title, provided the person required to obtain a trade permit under §300.182 retains, at his/her principal place of business for a period of 2 years from the date on which each report was submitted to NMFS, a copy of the biweekly report which includes the required information and is submitted under §635.5(b)(2)(i)(B) of this title.

(b) *Recordkeeping.* Any person required to obtain a trade permit under §300.182 must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) *Other requirements and recordkeeping requirements.* Any person required to obtain a trade permit under §300.182 is also subject to the reporting and recordkeeping requirements identified in §300.185.

(d) *Inspection.* Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or

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fish products regulated under this subpart, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, and any other records or reports made, retained, or submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect and copy, for any fish or fish products regulated under this subpart, any import and export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person issued a trade permit under this part, or anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

(e) *Applicability of reporting and recordkeeping requirements.* Reporting and recordkeeping requirements in this subpart apply to any person engaging in activities that require a trade permit, as set forth in §300.182(a), regardless of whether a trade permit has been issued to that person.

[73 FR 31385, June 2, 2008]

## § 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

(a) Except as noted at (b), the following fish or fish products are subject to the requirements of this subpart, regardless of ocean area of catch, and must be accompanied by the appropriate heading or subheading numbers from the Harmonized Tariff Schedule of the United States (HTS).

- (1) Bluefin tuna,
- (2) Southern bluefin tuna,
- (3) Frozen bigeye tuna,
- (4) Swordfish, and
- (5) Shark fins.

(b) For bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without documentation.

[77 FR 52261, Aug. 29, 2012]

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## § 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) *Imports*—(1) *Applicability of requirements.* The documentation requirements in paragraph (a)(2) of this section apply to all imports of fish or fish products regulated under this subpart, into the Customs territory of the United States, except shark fins, or except when entered as a product of an American fishery landed overseas (HTS heading 9815). For insular possessions with customs territories separate from the Customs territory of the United States, documentation requirements in paragraph (a)(2) of this section apply only to entries for consumption. The reporting requirements of paragraph (a)(3) of this section do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and are designated as an entry type other than entry for consumption as defined in §300.181.

(2) *Documentation requirements.* (i) All fish or fish products except for shark fins, regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (e.g., CBP Forms 7533 or 3461 or other documentation required by the port director) be accompanied by an original, completed, approved, validated, species-specific consignment document.

(ii) Imports of bluefin tuna which were re-exported from another nation, must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(iii) Imports of fish or fish products regulated under this subpart, other than shark fins, that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(iv) All other imports of fish or fish products regulated under this subpart,

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except shark fins, that have been previously re-exported from another nation, should have the intermediate importers certification of the original statistical document completed.

(v) Consignment documents must be validated as specified in §300.187 by a responsible government official of the flag country whose vessel caught the fish (regardless of where the fish are first landed). Re-export certificates must be validated by a responsible government official of the re-exporting country.

(vi) A permit holder may not accept an import without the completed consignment document or re-export certificate as described in paragraphs (a)(2)(i) through (a)(2)(v) of this section.

(vii) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

(viii) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(ix) Customs forms can be obtained by contacting the local CBP port office; contact information is available at [www.cbp.gov](http://www.cbp.gov). For a U.S. insular possession, contact the local customs office for any forms required for entry.

(3) *Reporting requirements.* For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final

destination is within the United States, which includes U.S. insular possessions, a permit holder must submit to NMFS the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section, to be received by NMFS along with the biweekly report as required under §300.183(a). A copy of the original completed consignment document must be submitted by said permit holder, to be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was entered for consumption into the Customs territory of the United States, or the separate customs territory of a U.S. insular possession.

(b) *Exports*—(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph (b) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that possession. This paragraph (b) also applies to products of American fisheries landed overseas.

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in §300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(3) *Reporting requirements.* A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of

such products to their export destination. A copy of the consignment document must be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession.

(c) *Re-exports*—(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph (c) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were previously entered for consumption into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, through filing the documentation specified in paragraph (a) of this section. The requirements of this paragraph (c) do not apply to fish or fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and which are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) *Documentation requirements.* (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment document that accompanied the import consignment or a copy of that document, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry summary.

(ii) If a consignment of fish or fish products regulated under this subpart,

except bluefin tuna or shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-consignments or consolidated, for each re-export consignment, a permit holder must complete the intermediate importer's certification on the original statistical document and note the entry number on the top of the statistical document. Such re-exports do not need a re-export certificate and the re-export does not require validation.

(iii) Re-export certificates must be validated, as specified in § 300.187, by NMFS or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment.

(3) *Reporting requirements.* For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to accompany the consignment of such products to their re-export destination. A copy of the completed consignment document and re-export certificate (if applicable) must be submitted to NMFS, at an address designated by NMFS, and received by NMFS within 24 hours of the time the consignment was re-exported from the United States. For re-exports of untagged Atlantic bluefin tuna, the permit holder must email, fax, or mail a copy of the completed consignment document and re-export certificate to the ICCAT Secretariat and the importing nation, at addresses designated by NMFS, to be received by the ICCAT Secretariat and the importing nation, within five days of export.

(d) *Document completion.* To be deemed complete, a consignment document or re-export certificate must be filled out according to the corresponding instructions for each document with all requested information provided.

(e) *Recordkeeping.* A permit holder must retain at his or her principal

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place of business, a copy of each consignment document and re-export certificate required to be submitted to NMFS pursuant to this section, and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(f) *Inspection.* Any person responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, including permit holders, consignees, customs brokers, freight forwarders, and importers of record, shall be subject to the inspection provisions at § 300.183(d).

[69 FR 67277, Nov. 17, 2004, as amended at 71 FR 58163, Oct. 2, 2006; 73 FR 31386, June 2, 2008; 74 FR 66586, Dec. 16, 2009]

### § 300.186 Completed and approved documents.

(a) *NMFS-approved consignment documents and re-export certificates.* A NMFS-approved consignment document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

(b) *Nationally approved forms from other countries.* A nationally approved form from another country may be used for exports to the United States if that document strictly conforms to the information requirements and format of the applicable RFMO documents. An approved consignment document or re-export certificate for use in countries without a nationally approved form to accompany consignments to the United States may be obtained from the following websites, as appropriate: [www.iccat.org](http://www.iccat.org), [www.iattc.org](http://www.iattc.org), [www.ccsbt.org](http://www.ccsbt.org), or [www.iotc.org](http://www.iotc.org).

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008]

### § 300.187 Validation requirements.

(a) *Imports.* The approved consignment document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable RFMO recommendation. NMFS will furnish a list of countries

for which government validation requirements are waived to the appropriate customs officials. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) *Exports.* The approved consignment document accompanying any export of fish or fish products regulated under this subpart must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(c) *Re-exports.* The approved re-export certificate accompanying any re-export of fish or fish products regulated under this subpart, as required under § 300.185(c), must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(d) *Validation waiver.* Any waiver of government validation will be consistent with applicable RFMO recommendations concerning validation of consignment documents and re-export certificates. If authorized, such waiver of government validation may include exemptions from government validation for Pacific bluefin tuna with individual BCD tags affixed pursuant to paragraph (f) of this section or for Atlantic bluefin tuna with tags affixed pursuant to § 635.5(b) of this title. Waivers will be specified on consignment documents and re-export certificates or accompanying instructions, or in a letter to permit holders from NMFS.

(e) *Authorization for non-NMFS validation.* An official from an organization or government agency seeking authorization to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing, to NMFS, at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated; list the names, addresses, and telephone/fax numbers of



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individuals to perform validation; procedures to be used to notify NMFS of validations; and an example of the stamp or seal to be applied to the consignment document or re-export certificate. NMFS, upon finding the applicant capable of verifying the information required on the consignment document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States. The effective date of such authorization will be delayed as necessary for NMFS to notify the appropriate RFMO of other officials authorized to validate consignment document or re-export certificates. Non-government organizations given authorization to validate consignment documents or re-export certificates must renew such authorization on a yearly basis.

(f) *BCD tags*—(1) *Issuance*. NMFS will issue numbered BCD tags for use on Pacific bluefin tuna upon request to each permit holder.

(2) *Transfer*. BCD tags issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

(3) *Affixing BCD tags*. At the discretion of permit holders, a tag issued under this section may be affixed to each Pacific bluefin tuna purchased or received by the permit holder. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(4) *Removal of tags*. A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the tuna until it is cut into portions. If the bluefin tuna or bluefin tuna parts are subsequently packaged for transport for domestic commercial use or for export, the number of each dealer tag or BCD tag must be written legibly and indelibly on the outside of any package containing the bluefin tuna or bluefin tuna parts. Such tag number also must be recorded on any document accompanying the consignment of bluefin tuna or bluefin tuna parts for commercial use or export.

(5) *Labeling*. The number of a BCD tag affixed to each Pacific bluefin tuna

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under this section must be recorded on NMFS reports required by § 300.183, on any documents accompanying the consignment of Pacific bluefin tuna for domestic commercial use or export as indicated in § 300.185, and on any additional documents that accompany the consignment (e.g., bill of lading, customs manifest, etc.) of the tuna for commercial use or for export.

(6) *Reuse*. BCD tags issued under this section are separately numbered and may be used only once, one tag per Pacific bluefin tuna, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a BCD tag and associated number may not be reused.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008]

## § 300.188 Ports of entry.

NMFS shall monitor the importation of fish or fish products regulated under this subpart into the United States. If NMFS determines that the diversity of handling practices at certain ports at which fish or fish products regulated under this subpart are being imported into the United States allows for circumvention of the consignment document requirement, NMFS may undertake a rulemaking to designate, after consultation with the CBP, those ports at which fish or fish products regulated under this subpart from any ocean area may be imported into the United States.

[73 FR 31388, June 2, 2008]

## § 300.189 Prohibitions.

In addition to the prohibitions specified in § 300.4, and §§ 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, the Atlantic Tunas Convention Act, the Magnuson-Stevens Act, the Tuna Conventions Act of 1950, or any other rules promulgated under those Acts. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Falsify information required on an application for a permit submitted under § 300.182.

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(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish product regulated under this subpart without a valid trade permit issued under § 300.182.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder's place of business, or alter any such permit as specified in § 300.182.

(d) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 300.183 or § 300.185.

(e) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 300.183 or § 300.185.

(f) Fail to comply with the documentation requirements as specified in § 300.185, § 300.186 or § 300.187, for fish or fish products regulated under this subpart that are imported, entered for consumption, exported, or re-exported.

(g) Fail to comply with the documentation requirements as specified in § 300.186, for the importation, entry for consumption, exportation, or re-exportation of an Atlantic swordfish, or part thereof, that is less than the minimum size.

(h) Validate consignment documents or re-export certificates without authorization as specified in § 300.187.

(i) Validate consignment documents or re-export certificates as provided for in § 300.187 with false information.

(j) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BCD tag program before removal is allowed under § 300.187; fail to write the tag number on the shipping package or container as specified in § 300.187; or reuse any NMFS-issued numbered tag affixed to any Pacific bluefin tuna, or any tag affixed to a bluefin tuna imported from a country with a BCD tag program, or any tag number previously written on a shipping package or container as prescribed by § 300.187.

(k) Import, or attempt to import, any fish or fish product regulated under this subpart in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 300.188.

(l) Ship, transport, purchase, sell, offer for sale, import, enter for consumption, export, re-export, or have in custody, possession, or control any fish or fish product regulated under this subpart that was imported, entered for consumption, exported, or re-exported contrary to this subpart.

(m) Fail to provide a validated consignment document for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to § 300.182 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart, except shark fins, without an original, completed, approved, validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter's certification completed.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008]

### Subpart N—Identification and Certification of Nations

AUTHORITY: 16 U.S.C. 1826d *et seq.*

SOURCE: 76 FR 2024, Jan. 12, 2011, unless otherwise noted.

#### § 300.200 Purpose and scope.

The purpose of this subpart is to implement the requirements in the High Seas Driftnet Fishing Moratorium Protection Act ("Moratorium Protection Act") to identify and certify nations whose vessels are engaged in illegal, unreported, or unregulated fishing or whose fishing activities result in bycatch of protected living marine resources. This language applies to vessels entitled to fly the flag of the nation in question. Identified nations that do not receive a positive certification may be subject to trade restrictive measures for certain fishery products. The Moratorium Protection Act also authorizes cooperation and assistance to nations that are taking action

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to combat illegal, unreported, or unregulated fishing or reduce bycatch of protected living marine resources.

### § 300.201 Definitions.

For the purposes of the Moratorium Protection Act:

*Bycatch* means: the incidental or discarded catch of protected living marine resources or entanglement of such resources with fishing gear.

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

(1) Fishing; or

(2) Any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing, bunkering or purchasing catch, or aiding or assisting one or more vessels at sea in the performance of such activity.

*Illegal, unreported, or unregulated (IUU) fishing* means:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including but not limited to catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

(2) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or,

(3) Fishing activity that has a significant adverse impact on seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures, including those in areas with no applicable international fishery management organization or agreement.

*International agreement* means: an agreement between two or more States, agencies of two or more States, or intergovernmental organizations which is legally binding and governed by international law.

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*International fishery management agreement* means: any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.

*International fishery management organization* means: an international organization established by any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.

*Protected living marine resources (PLMRs)* means: non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but they do not include species, except sharks, that are managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or by any international fishery management agreement.

### § 300.202 Identification and certification of nations engaged in illegal, unreported, or unregulated fishing activities.

(a) *Procedures to identify nations whose fishing vessels are engaged in IUU fishing*  
(1) NMFS will identify and list, in a biennial report to Congress, nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing.

(2) When determining whether to identify a nation as having fishing vessels engaged in IUU fishing, NMFS will take into account all relevant matters, including but not limited to the history, nature, circumstances, extent, duration, and gravity of the IUU fishing activity in question, and any measures that the nation has implemented to address the IUU fishing activity. NMFS will also take into account whether an international fishery management organization exists with a mandate to regulate the fishery in which the IUU activity in question takes place. If such an organization exists, NMFS will consider whether the

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relevant international fishery management organization has adopted measures that are effective at addressing the IUU fishing activity in question and, if the nation whose fishing vessels are engaged, or have been engaged, in IUU fishing is a party to, or maintains cooperating status with, the organization.

(b) *Notification of nations identified as having fishing vessels engaged in IUU fishing.* Upon identifying a nation whose vessels have been engaged in IUU fishing activities in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Notify nations that have been identified in the biennial report as having fishing vessels that are currently engaged, or were engaged at any point during the preceding two calendar years, in IUU fishing activities;

(2) Notify identified nations of the requirements under the Moratorium Protection Act and this subpart; and

(3) Notify any relevant international fishery management organization of actions taken by the United States to identify nations whose fishing vessels are engaged in IUU fishing and initiate consultations with such nations.

(c) *Consultation with nations identified as having fishing vessels engaged in IUU fishing.* Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in cooperation with the Secretary of State, will initiate consultations with nations that have been identified in the biennial report for the purpose of encouraging such nations to take appropriate corrective action with respect to the IUU fishing activities described in the biennial report.

(d) *Procedures to certify nations identified as having fishing vessels engaged in IUU fishing.* Each nation that is identified as having fishing vessels engaged in IUU fishing shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. A positive certification indicates that a na-

tion has taken appropriate corrective action to address the IUU fishing activity described in the biennial report. A negative certification indicates that a nation has not taken appropriate corrective action.

(1) The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report; or

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations and an opportunity to support and/or refute the preliminary determinations and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

### **§300.203 Identification and certification of nations engaged in by-catch of protected living marine resources.**

(a) *Procedures to identify nations whose fishing vessels are engaged in PLMR by-catch* (1) NMFS will identify and list, in the biennial report to Congress, nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any national

jurisdiction that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States. When determining whether to identify nations as having fishing vessels engaged in PLMR bycatch, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

(2) NMFS will also examine whether there is an international organization with jurisdiction over the conservation and protection of the relevant PLMRs or a relevant international or regional fishery organization. If such organization exists, NMFS will examine whether the organization has adopted measures to effectively end or reduce bycatch of such species; and if the nation whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in bycatch of PLMRs is a party to or maintains cooperating status with the relevant international organization.

(3) NMFS will also examine whether the nation has implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements. In considering whether a nation has implemented measures that are comparable in effectiveness to those of the United States, NMFS will evaluate if different conditions exist that could bear on the feasibility and efficiency of such measures to end or reduce bycatch of the pertinent PLMRs.

(b) *Notification of nations identified as having fishing vessels engaged in PLMR bycatch.* Upon identifying a nation whose vessels have been engaged in bycatch of PLMRs in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the Moratorium Protection Act and this subpart.

(c) *Consultations and negotiations.* Upon submission of the biennial report

to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of entering into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

(2) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

(d) *International cooperation and assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive certification under paragraph (e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) *Procedures to certify nations identified as having fishing vessels engaged in PLMR bycatch.* (1) Each nation that is identified as having fishing vessels engaged in PLMR bycatch shall receive

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either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(i) Such nation has provided evidence documenting its adoption of a regulatory program to end or reduce bycatch of such PLMRs that is comparable in effectiveness to regulatory measures required under U.S. law to address bycatch in the relevant fisheries, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and which, in the case of an identified nation with fishing vessels engaged in pelagic longline fishing, includes the mandatory use of circle hooks, careful handling and release equipment, training and observer programs; and

(ii) Such nation has established a management plan that will assist in the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs.

(2) Nations will be notified prior to a formal certification determination and will be provided with an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

### § 300.204 Effect of certification.

(a) If an identified nation does not receive a positive certification under this subpart (*i.e.*, the nation receives a negative certification or no certification is made), the fishing vessels of such nation are, to the extent consistent with international law, subject to the denial of entry into any place in the United States and to the navigable waters of the United States.

(b) At the recommendation of the Secretary of Commerce (*see* § 300.205), certain fish or fish products from such

nation may be subject to import prohibitions.

(c) Any action recommended under this paragraph (c) shall be consistent with international obligations, including the WTO Agreement.

(d) If certain fish or fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization.

(e) *Duration of certification.* Any nation identified in the biennial report to Congress and negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken appropriate corrective action to address the IUU fishing activity and/or bycatch of PLMRs for which it was identified in the biennial report. Receipt of a positive certification determination will demonstrate that appropriate corrective action has been taken by a nation to address the relevant IUU fishing activity and/or bycatch of PLMRs.

(f) *Consultations.* NMFS will, working through or in consultation with the Department of State, continue consultations with nations that receive a negative certification with respect to the IUU fishing activities or bycatch of PLMRs described in the biennial report

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to Congress. The Secretary of Commerce shall take the results of such consultations into consideration when making a subsequent certification determination for such nation.

### **§ 300.205 Denial of port privileges and import restrictions on fish or fish products.**

(a) *Scope of Applicability* (1) If a nation identified in the biennial report under § 300.202(a) or § 300.203(a) is not positively certified by the Secretary of Commerce, and fishing vessels of the nation are allowed entry to any place in the United States and to the navigable waters of the United States under this subpart, those vessels will be subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of force majeure or distress.

(2) For nations identified in the biennial report under § 300.202(a) that are not positively certified, the Secretary of Commerce shall recommend import prohibitions with respect to fish or fish products from those nations. Such recommendations on import prohibitions would not apply to fish or fish products not managed under an applicable international fishery agreement, or if there is no applicable international fishery agreement, to the extent that such provisions would apply to fish or fish products caught by vessels not engaged in illegal, unreported, or unregulated fishing. For nations identified under § 300.203(a) that are not positively certified, the Secretary of Commerce shall also recommend import prohibitions; such prohibitions shall not apply to fish or fish products not caught by the vessels engaged in the relevant activity for which the nation was identified.

(3) Any action recommended under this paragraph (a)(3) shall be consistent with international obligations, including the WTO Agreement.

(b) *Imposition of import restrictions*—(1) *Notification.* Where the Secretary of Commerce cannot make positive cer-

tifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, with the concurrence of the Secretary of State and in cooperation with the Secretary of Treasury, will file a notice with the Office of the Federal Register.

(2) *Documentation of admissibility.* If certain fish or fish products are subject to import prohibitions, NMFS may publish in the FEDERAL REGISTER the requirement that other fish or fish products from the relevant nation that are not subject to the prohibitions be accompanied by documentation of admissibility. The documentation of admissibility must be executed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, *etc.*) specified by NMFS.

(3) *Effective date of import restrictions.* Effective upon the date of publication of such finding, shipments of fish or fish products found to be ineligible will be denied entry to the United States. Entry will not be denied for any such shipment that, on the date of publication, was in transit to the United States.

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary of Commerce that an identified nation that was not certified positively has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of § 300.205 shall no longer apply. The Secretary of Commerce, with the concurrence of the Secretary of State and in cooperation with the Secretary of Treasury, will notify such nations and will file with the Office of the Federal Register for publication notification of the removal of the import restrictions effective on the date of publication.

EFFECTIVE DATE NOTE: At 76 FR 2024, Jan. 12, 2011, § 302.205 was added. This section contains information collection and record-keeping requirements in paragraph (b)(2)

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which will not become effective until approval has been given by the Office of Management and Budget.

### § 300.206 Alternative procedures for IUU fishing activities.

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation that has been identified under § 300.202 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that:

(1) The vessel has not engaged in IUU fishing under an international fishery management agreement to which the U.S. is a party; or

(2) The vessel is not identified by an international fishery management organization as participating in IUU fishing activities.

(c) Fish or fish products offered for entry under this paragraph (c) must be accompanied by a completed documentation of admissibility available from NMFS. The documentation of admissibility must be executed by a duly authorized official of the identified nation and must be validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

EFFECTIVE DATE NOTE: At 76 FR 2024, Jan. 12, 2011, § 302.206 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.

### § 300.207 Alternative procedures for bycatch of PLMRs.

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation that has been identified under § 300.203 in the event that the Secretary cannot reach a certification determination for

that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(1) Are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fisheries, the regulatory program of an identified nation includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(2) Include the gathering of species specific data that can be used to support international and regional assessments and conservation efforts for protected living marine resources.

(c) Fish or fish products offered for entry under this section must be accompanied by a completed documentation of admissibility available from NMFS. The documentation of admissibility must be executed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

EFFECTIVE DATE NOTE: At 76 FR 2024, Jan. 12, 2011, § 302.207 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.

## Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

SOURCE: 74 FR 38554, Aug. 4, 2009, unless otherwise noted.

AUTHORITY: 16 U.S.C. 6901 *et seq.*



**§ 300.210 Purpose and scope.**

This subpart implements provisions of the Western and Central Pacific Fisheries Convention Implementation Act (Act) and applies to persons and vessels subject to the jurisdiction of the United States.

**§ 300.211 Definitions.**

In addition to the terms defined in § 300.2 and those in the Act and in the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (WCPF Convention), which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, the terms used in this subpart have the following meanings.

*1982 Convention* means the United Nations Convention on the Law of the Sea of 10 December 1982.

*Aggregate or summary form* means information structured in such a way which does not directly or indirectly disclose the identity or business of any person who submits such information.

*Commercial*, with respect to commercial fishing, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

*Commission* means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with the WCPF Convention, including its employees and contractors.

*Confidential information* means any observer information or any information submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the Act or under the Magnuson-Stevens Fishery Conservation and Management Act.

*Conservation and management measure* means those conservation and management measures adopted by the Commission pursuant to Article 10 of the WCPF Convention.

*Convention Area* means all waters of the Pacific Ocean bounded to the south and to the east by the following line:

From the south coast of Australia due south along the 141st meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the 150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

*Effort Limit Area for Purse Seine*, or *ELAPS*, means, within the area between 20° N. latitude and 20° S. latitude, areas within the Convention Area that either are high seas or are within the jurisdiction of the United States, including the EEZ and territorial sea.

*Fish aggregating device*, or *FAD*, means any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any objects used for that purpose that are situated on board a vessel or otherwise out of the water. The meaning of FAD does not include a fishing vessel, provided that the fishing vessel is not used for the purpose of aggregating fish.

*Fishing* means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so:

(1) Searching for, catching, taking, or harvesting fish;

(2) Engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose;

(3) Placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(4) Engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in paragraphs (1) through (3) of

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this definition, including, but not limited to, bunkering;

(5) Engaging in transshipment at sea, either unloading or loading fish.

*Fishing day* means, for the purpose of § 300.223, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

*Fishing trip* means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

*Fishing vessel* means any vessel used or intended for use for the purpose of

fishing, including bunkering and other support vessels, carrier vessels and other vessels that unload or load fish in a transshipment, and any other vessel directly involved in fishing.

*Hawaiian Archipelago* means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

*High seas* means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

*Highly migratory species (or HMS)* means any of the following species:

| Common name           | Scientific name                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Albacore              | <i>Thunnus alalunga</i> .                                                                                                                                                  |
| Pacific bluefin tuna  | <i>Thunnus orientalis</i> .                                                                                                                                                |
| Southern bluefin tuna | <i>Thunnus maccoyii</i> .                                                                                                                                                  |
| Bigeye tuna           | <i>Thunnus obesus</i> .                                                                                                                                                    |
| Skipjack tuna         | <i>Katsuwonus pelamis</i> .                                                                                                                                                |
| Yellowfin tuna        | <i>Thunnus albacares</i> .                                                                                                                                                 |
| Little tuna           | <i>Euthynnus affinis</i> .                                                                                                                                                 |
| Frigate mackerel      | <i>Auxis thazard</i> ; <i>Auxis rochei</i> .                                                                                                                               |
| Pomfrets              | Family Bramidae.                                                                                                                                                           |
| Marlins               | <i>Tetrapturus angustirostris</i> ; <i>Tetrapturus audax</i> ; <i>Makaira mazara</i> ; <i>Makaira indica</i> ; <i>Makaira nigricans</i> .                                  |
| Sail-fishes           | <i>Istiophorus platypterus</i> .                                                                                                                                           |
| Swordfish             | <i>Xiphias gladius</i> .                                                                                                                                                   |
| Dolphinfish           | <i>Coryphaena hippurus</i> ; <i>Coryphaena equiselis</i> .                                                                                                                 |
| Oceanic sharks        | <i>Hexanchus griseus</i> ; <i>Cetorhinus maximus</i> ; Family Alopiidae; <i>Rhincodon typus</i> ; Family Carcharhinidae; Family Sphyrnidae; Family Isuridae (or Lamnidae). |

*High seas fishing permit* means a permit issued under § 300.13.

*Longline gear* means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached, where "protected species zone" is used as defined at § 665.12 of this title.

*Marine Fisheries Commission* means the Atlantic States Marine Fisheries

Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

*Member of the Commission* means any Contracting Party to the WCPF Convention, and, unless otherwise stated in context, any territory that has been authorized by an appropriate Contracting Party to participate in the Commission and its subsidiary bodies pursuant to Article 43 of the WCPF Convention and any fishing entity that has agreed to be bound by the regime established by the WCPF Convention pursuant to Annex I of the WCPF Convention.

*NOAA* means the National Oceanic and Atmospheric Administration, Department of Commerce.

*Observer employer/observer provider* means any person that provides observers to fishing vessels, shoreside processors, or stationary floating processors under a requirement of the Act or the Magnuson-Stevens Fishery Conservation and Management Act.

*Observer information* means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

*Pacific Islands Regional Administrator* means the Regional Administrator, Pacific Islands Region, NMFS, or a designee (1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814).

*Person* means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

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

*Special Agent-In-Charge (or SAC)* means the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division, or a designee (1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; tel: (808) 203-2500; facsimile: (808) 203-2599; e-mail: [pidvms@noaa.gov](mailto:pidvms@noaa.gov)).

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

*Transshipment* means the unloading of fish from one fishing vessel and its direct transfer to, and loading on, an-

other fishing vessel, either at sea or in port.

*Vessel monitoring system (or VMS)* means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

*VMS unit*, sometimes known as a "mobile transmitting unit," means a transceiver or communications device, including all hardware and software, that is carried and operated on a vessel as part of a VMS.

*WCPFC Area Endorsement* means the authorization issued by NMFS under § 300.212, supplementary to a valid high seas fishing permit and expressed as an endorsement to such permit, for a fishing vessel used for commercial fishing for highly migratory species on the high seas in the Convention Area.

*WCPFC Convention* means the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States) that was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

*WCPFC observer* means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme.

*WCPFC inspection vessel* means any vessel that is:

(1) Authorized by a member of the Commission to be used to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, Article 26 of the

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WCPF Convention and procedures established by the Commission pursuant thereto;

(2) Included in the Commission's register of authorized inspection vessels and authorities or inspectors, established by the Commission in procedures pursuant to Article 26 of the WCPF Convention; and

(3) Flying the WCPFC inspection flag established by the Commission.

*WCPFC inspector* means a person that is authorized by a member of the Commission to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, the boarding and inspection procedures adopted by the Commission under Article 26 of the WCPF Convention, and referred to therein as a "duly authorized inspector" or "authorized inspector."

\* \* \* \* \*

*WCPFC transshipment monitor* means, with respect to transshipments that take place on the high seas, a person authorized by the Commission to conduct transshipment monitoring on the high seas, and with respect to transshipments that take place in areas under the jurisdiction of a member of the Commission other than the United States, a person authorized by such member of the Commission to conduct transshipment monitoring.

[72 FR 18405, Apr. 12, 2007, as amended at 74 FR 64010, Dec. 7, 2009; 75 FR 3347, Jan. 21, 2010]

### § 300.212 Vessel permit endorsements.

(a) Any fishing vessel of the United States used for commercial fishing for HMS on the high seas in the Convention Area must have on board a valid high seas fishing permit, or a copy thereof, that has a valid WCPFC Area Endorsement, or a copy thereof.

(b) *Eligibility.* Only a fishing vessel that has a valid high seas fishing permit is eligible to receive a WCPFC Area Endorsement.

(c) *Application.* (1) A WCPFC Area Endorsement may be applied for at the same time the underlying high seas permit is applied for, or at any time thereafter.

(2) The owner or operator of a high seas fishing vessel may apply for a WCPFC Area Endorsement by completing an application form, available from the Pacific Islands Regional Administrator, and submitting the complete and accurate application, signed by the applicant, to the Pacific Islands Regional Administrator, along with the required fees.

(3) The application must be accompanied by a bow-to-stern side-view photograph of the vessel in its current form and appearance. The photograph must meet the specifications prescribed on the application form and clearly show that the vessel is marked in accordance with the vessel identification requirements of § 300.217.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of issuance of a WCPFC Area Endorsement. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from the Pacific Islands Regional Administrator, for determining administrative costs of each special product or service. The fee is specified in the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the WCPFC Area Endorsement. Payment by a commercial instrument later determined to be insufficiently funded is grounds for invalidating the WCPFC Area Endorsement.

(e) *Issuance.* (1) The Pacific Islands Regional Administrator will issue a WCPFC Area Endorsement within 30 days of receipt of a complete application that meets the requirements of this section and upon payment of the appropriate fee.

(2) If an incomplete or improperly completed application is submitted, the Pacific Islands Regional Administrator will notify the applicant of such deficiency within 30 days of the date of receipt of the application. If the applicant fails to correct the deficiency and send a complete and accurate application to the Pacific Islands Regional Administrator within 30 days of the date of the notification of deficiency, the application will be considered withdrawn and no further action will be

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taken to process the application. Following withdrawal, the applicant may at any time submit a new application for consideration.

(f) *Validity.* A WCPFC Area Endorsement issued under this subpart expires upon the expiration of the underlying high seas fishing permit, and shall be void whenever the underlying high seas fishing permit is void, suspended, sanctioned or revoked. A WCPFC Area Endorsement is also subject to suspension or revocation independent of the high seas fishing permit. Renewal of a WCPFC Area Endorsement prior to its expiration is the responsibility of the WCPFC Area Endorsement holder.

(g) *Change in application information.* Any change in the required information provided in an approved or pending application for a WCPFC Area Endorsement must be reported by the vessel owner or operator to the Pacific Islands Regional Administrator in writing within 15 days of such change.

(h) *Transfer.* A WCPFC Area Endorsement issued under this subpart is valid only for the vessel, owner, and high seas fishing permit to which it is issued and is not transferable or assignable to another high seas fishing permit or to another vessel.

(i) *Display.* A valid WCPFC Area Endorsement, or a photocopy or facsimile copy thereof, issued under this subpart must be on board the vessel and available for inspection by any authorized officer while the vessel is at sea and must be available for inspection by any WCPFC inspector while the vessel is on the high seas in the Convention Area.

[75 FR 3349, Jan. 21, 2010]

### § 300.213 Vessel information.

(a) The owner or operator of any fishing vessel of the United States that is used for fishing for HMS in the Convention Area in waters under the jurisdiction of any nation other than the United States must, prior to the commencement of such fishing, submit to the Pacific Islands Regional Administrator information about the vessel and its ownership and operation, and the authorized fishing activities, including copies of any permits, licenses, or authorizations issued for such activities, as specified on forms available from the Pacific Islands Regional Ad-

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ministrator. The owner or operator of such a fishing vessel must also submit to the Pacific Islands Regional Administrator a bow-to-stern side-view photograph of the vessel in its current form and appearance, and the photograph must meet the specifications prescribed on the application form. If any of the submitted information changes, the vessel owner or operator must report the updated information to the Pacific Islands Regional Administrator in writing within 15 days of the change.

(b) If any of the information or the vessel photograph required under paragraph (a) of this section has been submitted for the subject vessel on an application for a high seas fishing permit or an application for a WCPFC Area Endorsement, then the requirements of paragraph (a) of this section will be deemed satisfied. However, in order to satisfy this requirement, the high seas fishing permit or WCPFC Area Endorsement must be valid, the information provided must be true, accurate and complete, and in the case of a vessel photograph, it must meet the specifications prescribed on the form used for the purpose of submitting the photograph under this section.

[75 FR 3349, Jan. 21, 2010]

### § 300.214 Compliance with laws of other nations.

(a) The owner and operator of a fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required:

(1) May not use the vessel for fishing, retaining fish on board, or landing fish in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) Shall, when the vessel is in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, operate the vessel in compliance with, and ensure its crew complies with, the applicable national laws of such member.

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(b) The owner and operator of a fishing vessel of the United States shall ensure that:

(1) The vessel is not used for fishing for HMS, retaining HMS on board, or landing HMS in the Convention Area in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) If the vessel is used for commercial fishing for HMS, including transshipment of HMS, in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, the vessel is operated in compliance with, and the vessel crew complies with, the applicable laws of such member, including any laws related to carrying vessel observers or the operation of VMS units.

(c) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

[75 FR 3349, Jan. 21, 2010]

### § 300.215 Observers.

(a) *Applicability.* This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(b) *Notifications.* [Reserved]

(c) *Accommodating observers.* All fishing vessels subject to this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with this paragraph with respect to any WCPFC observer.

(1) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment on board as necessary to conduct observer duties, including, but not limited to: full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to

the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(2) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(3) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) *Related observer requirements.* Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for commercial fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

[72 FR 18405, Apr. 12, 2007, as amended at 75 FR 3350, Jan. 21, 2010]

### § 300.216 Transshipment.

(a) *Transshipment monitoring.* [Reserved]

(b) *Transshipment restrictions.* Fish may not be transshipped from a purse seine fishing vessel of the United States at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a purse seine fishing vessel at sea in the Convention Area.

[75 FR 3350, Jan. 21, 2010]

### § 300.217 Vessel identification.

(a) *General.* (1) A fishing vessel must be marked in accordance with the requirements of this section in order for a WCPFC Area Endorsement to be issued for the fishing vessel.

(2) Any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required shall be marked for identification purposes in accordance with this section, and all parts of such markings shall be clear, distinct, uncovered, and unobstructed.

(3) Any boat, skiff, or other watercraft carried on board the fishing vessel shall be marked with the same identification markings as required under this section for the fishing vessel and shall be marked in accordance with this section.

(b) *Marking.* (1) Vessels shall be marked in accordance with the identification requirements of § 300.14(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters “USA” and a hyphen (that is, “USA-”).

(2) With the exception of the vessel’s name and hailing port, the marking required in this section shall be the only vessel identification mark consisting of letters and numbers to be displayed on the hull and superstructure.

[75 FR 3350, Jan. 21, 2010, as amended at 76 FR 73520, Nov. 29, 2011]

**§ 300.218 Reporting and recordkeeping requirements.**

(a) *Fishing reports.*—(1) *General.* The owner or operator of any fishing vessel of the United States used for commercial fishing for HMS in the Pacific Ocean must maintain and report to NMFS catch and effort and other operational information for all such fishing activities. The reports must include at a minimum: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded.

(2) *Reporting options.* Vessel owners and operators shall be deemed to meet the recordkeeping and reporting requirements of paragraph (a)(1) of this section by satisfying all applicable catch and effort reporting requirements as listed below:

(i) *Western Pacific pelagic fisheries.* Fishing activities subject to the reporting requirements of § 665.14 of this

title must be maintained and reported in the manner specified in that section.

(ii) *West Coast HMS fisheries.* Fishing activities subject to the reporting requirements of § 660.708(a) of this title must be maintained and reported in the manner specified in that section.

(iii) *Pacific tuna fisheries.* Fishing activities subject to the reporting requirements of § 300.22 must be maintained and reported in the manner specified in that section.

(iv) *South Pacific tuna fisheries.* Fishing activities subject to the reporting requirements of § 300.34(c)(1) must be maintained and reported in the manner specified in that section.

(v) *High seas fisheries.* Fishing activities subject to the reporting requirements of § 300.17(a) must be maintained and reported in the manner specified in § 300.17(a) and (b).

(vi) *Canada albacore fisheries.* Fishing activities subject to the reporting requirements of § 300.174 must be maintained and reported in the manner specified in that section.

(vii) *State-regulated fisheries.* Catch and effort information for fishing activities for which reporting of effort, catch, and/or landings is required under State law must be maintained and reported in the manner specified under such State law.

(viii) *Other fisheries.* All other fishing activities subject to the requirement of paragraph (a)(1) of this section must be recorded on paper or electronic forms specified or provided by the Pacific Islands Regional Administrator. Such forms will specify the information required, which may include: Identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded. All information specified by the Pacific Islands Regional Administrator on such forms must be recorded on paper or electronically within 24 hours of the completion of each fishing day. The information recorded must, for each fishing day, include a dated signature of the vessel operator or other type of authentication as specified by the Pacific Islands Regional Administrator. The vessel operator must, unless otherwise specified by the Pacific Islands Regional Administrator,

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submit the information for each fishing day to the Pacific Islands Regional Administrator within 72 hours of the first landing or port call after the fishing day, and must submit the information in the manner specified by the Pacific Islands Regional Administrator.

(3) *Exceptions.* (i) Catch and effort information for fishing activities that take place in waters under State jurisdiction must be maintained and reported only in cases where the reporting of such activity is required under State law or under Federal regulations at §§ 300.22 and 300.34, and §§ 660.708 and 665.14 of this title.

(ii) Catch and effort information for fishing activities that take place in waters under Federal jurisdiction around American Samoa, Guam and the Northern Mariana Islands need not be reported under this section unless reporting of such activity is required under regulations in chapter VI of this title.

(b) *Transshipment reports.* [Reserved]

[75 FR 3350, Jan. 21, 2010]

### § 300.219 Vessel monitoring system.

(a) *SAC and VMS Helpdesk contact information and business hours.* The contact information for the SAC for the purpose of this section is: 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; telephone: (808) 203-2500; facsimile: (808) 203-2599; e-mail: [pidvms@noaa.gov](mailto:pidvms@noaa.gov). The business hours of the SAC for the purpose of this section are: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time. The contact information for the NOAA Office of Law Enforcement's VMS Helpdesk for the purpose of this section is: telephone: (888) 219-9228; e-mail: [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov). The business hours of the VMS Helpdesk for the purpose of this section are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(b) *Applicability.* This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(c) *Provision of vessel position information—(1) VMS unit installation.* The vessel owner and operator shall obtain and have installed on the fishing vessel, in accordance with instructions provided

by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall authorize the Commission and NMFS to receive and relay transmissions from the VMS unit. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers.

(2) *VMS unit activation.* If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous activation, or if directed by the SAC, the vessel owner and operator shall, prior to the vessel leaving port:

(i) Turn on the VMS unit to make it operational;

(ii) Submit a written activation report, via mail, facsimile or e-mail, to the SAC, that includes: the vessel's name; the vessel's official number; the VMS unit manufacturer and identification number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(3) *VMS unit operation.* The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is at port or otherwise not at sea, provided that the owner and operator:

(i) Prior to shutting down the VMS unit, report to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk via facsimile or e-mail, the following information: the intent to shut down the VMS unit; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(ii) When turning the VMS unit back on, report to the SAC or the NOAA Office of Law Enforcement's VMS



Helpdesk, via mail, facsimile or e-mail, the following information: that the VMS unit has been turned on; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Prior to leaving port, receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(4) *Failure of VMS unit.* If the vessel owner or operator becomes aware that the VMS unit has become inoperable or that transmission of automatic position reports from the VMS unit has been interrupted, or if notified by NMFS or the USCG that automatic position reports are not being received from the VMS unit or that an inspection of the VMS unit has revealed a problem with the performance of the VMS unit, the vessel owner and operator shall comply with the following requirements:

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or e-mail at the earliest opportunity during the SAC's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC, which could include, but are not limited to: ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and, repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, the owner and operator have authorized the Commission and NMFS to

receive and relay transmissions from the VMS unit, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

(d) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit, and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS as required in paragraph (c) of this section. However, if the VMS unit is being carried and operated in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units, the vessel owner and operator shall not be responsible for costs that are the responsibility of NMFS under those regulations.

(e) *Tampering.* The vessel owner and operator shall ensure that the VMS unit is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(f) *Inspection.* The vessel owner and operator shall make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers, by employees of the Commission, by persons appointed by the Executive Director of the Commission for this purpose, and, when the vessel is on the high seas in the Convention Area, by WCPFC inspectors.

(g) *Access to data.* The vessel owner and operator shall make the vessel's position data obtained from the VMS unit or other means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers, and shall make the vessel's position data for positions on the high seas in the Convention Area immediately and always available to WCPFC inspectors and the Commission.

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(h) *Communication devices.* (1) To facilitate communication with management and enforcement authorities regarding the functioning of the VMS unit and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device that is capable of real-time communication with the SAC. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. If the device is anything other than a radio, the contact number for the device must be provided to the Pacific Islands Regional Administrator on the application form for the WCPFC Area Endorsement in accordance with the requirements of § 300.212.

(2) For the purpose of submitting the position reports that might be required in cases of VMS unit failure under paragraph (c)(4)(ii) of this section, the vessel operator shall, while the vessel is at sea, carry on board a communication device capable of transmitting, while the vessel is on the high seas in the Convention Area, communications by telephone, facsimile, e-mail, or radio to the Commission, in Pohnpei, Micronesia. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. The same communication device may be able to satisfy the requirements of both this paragraph and paragraph (h)(1) of this section.

[75 FR 3351, Jan. 21, 2010]

### § 300.220 Confidentiality of information.

(a) *Types of information covered.* NOAA is authorized under the Act and other statutes to collect and maintain information. This section applies to confidential information collected under authority of the Act.

(b) *Collection and maintenance of information—(1) General.* (i) Any information required to be submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission under the Act shall be provided to the Assistant Administrator.

(ii) Any observer information collected under the Act shall be provided to the Assistant Administrator.

(iii) Appropriate safeguards as specified by NOAA Administrative Order (NAO) 216-100 or other NOAA/NMFS internal procedures, apply to the collection and maintenance of any information collected pursuant to paragraphs (b)(1) or (b)(2) of this section, whether separated from identifying particulars or not, so as to ensure their confidentiality. Information submitted to the Secretary in compliance with this subpart shall not be disclosed except as authorized herein or by other law or regulation.

(2) *Collection agreements with States or Marine Fisheries Commissions.* (i) The Assistant Administrator may enter into an agreement with a State or a Marine Fisheries Commission authorizing the State or Marine Fisheries Commission to collect information on behalf of the Secretary.

(ii) To enter into a cooperative collection agreement with a State or a Marine Fisheries Commission, NMFS must ensure that:

(A) The State has authority to protect the information from disclosure in a manner at least as protective as these regulations.

(B) The Marine Fisheries Commission has enacted policies and procedures to protect the information from public disclosure.

(3) *Collection services by observer employer/observer provider.* The Assistant Administrator shall make the following determinations before issuing a permit or letting a contract or grant to an organization that provides observer services:

(i) That the observer employer/observer provider has enacted policies and procedures to protect the information from public disclosure;

(ii) That the observer employer/observer provider has entered into an agreement with the Assistant Administrator that prohibits public disclosure and specifies penalties for such disclosure; and

(iii) That the observer employer/observer provider requires each observer to sign an agreement with NOAA/NMFS that prohibits public disclosure of observer information and specifies penalties for such disclosure.

(c) *Access to information*—(1) *General*. This section establishes procedures intended to manage, preserve, and protect the confidentiality of information submitted in compliance with the Act and its implementing regulations. This section applies to those persons and organizations deemed eligible to access confidential information subject to the terms and conditions described in this section and the Act. All other persons requesting access to confidential information should follow the procedures set forth in the Freedom of Information Act, 5 U.S.C. 552, 15 CFR parts 15 and 903, NAO 205–14, and Department of Commerce Administrative Orders 205–12 and 205–14, as applicable. Persons eligible to access confidential information under this section shall submit to NMFS a written request with the following information:

- (i) The specific types of information requested;
- (ii) The relevance of the information to requirements of the Act;
- (iii) The duration of time that access will be required: continuous, infrequent, or one-time; and
- (iv) An explanation of why the availability of information in aggregate or summary form from other sources would not satisfy the requested needs.

(2) *Federal employees*. Confidential information will only be accessible to the following:

- (i) Federal employees who are responsible for administering, implementing, or enforcing the Act. Such persons are exempt from the provisions of paragraph (c)(1) of this section.
- (ii) NMFS employees responsible for the collection, processing, and storage of the information or performing research that requires access to confidential information. Such persons are exempt from the provisions of paragraph (c)(1) of this section.
- (iii) Other NOAA employees on a demonstrable need-to-know basis.
- (iv) Persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS.

(3) *Commission*. (i) Confidential information will be subject to disclosure to the Commission, but only if:

(A) The information is required to be submitted to the Commission under the requirements of the WCPF Convention or the decisions of the Commission;

(B) The provision of such information is in accord with the requirements of the Act, the WCPF Convention, and the decisions of the Commission, including any procedures, policies, or practices adopted by the Commission relating to the receipt, maintenance, protection or dissemination of information by the Commission; and

(C) The provision of such information is in accord with any agreement between the United States and the Commission that includes provisions to prevent public disclosure of the identity or business of any person.

(ii) The provisions of paragraph (c)(1) of this section do not apply to the release of confidential information to the Commission.

(4) *State employees*. Confidential information may be made accessible to a State employee only by written request and only upon the determination by NMFS that at least one of the following conditions is met:

- (i) The employee has a need for confidential information to further the Department of Commerce's mission, and the State has entered into a written agreement between the Assistant Administrator and the head of the State's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the State has confidentiality protection authority comparable to the Act and that the State will exercise this authority to prohibit public disclosure of the identity or business of any person.
- (ii) The employee enforces the Act or fishery management plans prepared under the authority of the Magnuson-Stevens Conservation and Management Act, and the State for which the employee works has entered into a fishery enforcement agreement with the Secretary and the agreement is in effect.

(5) *Marine Fisheries Commission employees*. Confidential information may be made accessible to Marine Fisheries Commission employees only upon written request of the Marine Fisheries Commission and only if the request

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demonstrates a need for confidential information to further the Department of Commerce's mission, and the executive director of the Marine Fisheries Commission has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the Marine Fisheries Commission has confidentiality protection policies and procedures to protect from public disclosure information that would reveal the identity or business of any person.

(6) *Homeland and national security activities.* Confidential information may be made accessible to Federal employees for purposes of promoting homeland security or national security at the request of another Federal agency only if:

(i) Providing the information promotes homeland security or national security purposes including the USCG's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); and

(ii) The requesting agency has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the requesting agency has confidentiality policies and procedures to protect the information from public disclosure.

(7) *Observer and observer employer/observer provider.* Confidential information used for purposes other than those contained in this subpart or in part 600 of this title may only be used by observers and observer employers/observer providers in order:

(i) To adjudicate observer certifications;

(ii) To allow the sharing of observer information among the observers and between observers and observer employers/observer providers as necessary to train and prepare observers for deployments on specific vessels; or

(iii) To validate the accuracy of the observer information collected.

(8) Persons having access to confidential information may be subject to criminal and civil penalties for unauthorized use or disclosure of confidential information. See 18 U.S.C. 1905, 16

U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216-100.

(d) *Control system.* (1) The Assistant Administrator maintains a control system to protect the identity or business of any person who submits information in compliance with any requirement or regulation under the Act. The control system:

(i) Identifies those persons who have access to the information;

(ii) Contains procedures to limit access to confidential information to authorized users; and

(iii) Provides handling and physical storage protocols for safeguarding of the information.

(2) This system requires that all persons who have authorized access to the information be informed of the confidentiality of the information. These persons, with the exception of employees and contractors of the Commission, are required to sign a statement that they:

(i) Have been informed that the information is confidential; and

(ii) Have reviewed and are familiar with the procedures to protect confidential information.

(e) *Release of information.* (1) The Assistant Administrator will not disclose to the public any confidential information, except:

(i) When the Secretary has obtained from the person who submitted the information an authorization to release the information to persons for reasons not otherwise provided for in this subpart. In situations where a person provides information through a second party, both parties are considered joint submitters of information and either party may request a release. The authorization to release such information will require:

(A) A written statement from the person(s) who submitted the information authorizing the release of the submitted information; and

(B) A finding by the Secretary that such release does not violate other requirements of the Act or other applicable laws.

(ii) Observer information as authorized by a fishery management plan (prepared under the authority of the

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Magnuson-Stevens Fishery Conservation and Management Act) or regulations under the authority of the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification.

(iii) When such information is required to be submitted for any determination under a limited access program.

(iv) When required by a court order.

(2) All requests from the public for confidential information will be processed in accordance with the requirements of 5 U.S.C. 552a, 15 CFR parts 4 and 903, NAO 205–14, and Department of Commerce Administrative Orders DAO 205–12 and DAO 205–14. Nothing in this section is intended to confer any right, claim, or entitlement to obtain access to confidential information not already established by law.

(3) NMFS does not release or allow access to confidential information in its possession to members of advisory groups of the Regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act, except as provided by law.

[75 FR 3352, Jan. 21, 2010]

### **§ 300.221 Facilitation of enforcement and inspection.**

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) A fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required, including the vessel's operator and each member of the vessel's crew shall, when in the Convention Area, be subject to the following requirements:

(1) The Federal Certificate of Documentation or State or other documentation for the vessel, or a copy thereof, shall be carried on board the vessel. Any license, permit or other authorization to use the vessel to fish, retain fish, transship fish, or land fish issued by a nation or political entity other than the United States, or a copy thereof, shall be carried on board the

vessel. These documents shall be made available for inspection by any authorized officer. If the vessel is on the high seas, the above-mentioned licenses, permits, and authorizations shall also be made available for inspection by any WCPFC inspector. If the vessel is in an area under the jurisdiction of a member of the Commission other than the United States, they shall be made available for inspection by any authorized enforcement official of that member.

(2) For the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission, the operator shall ensure the continuous monitoring of the international safety and calling radio frequency 156.8 MHz (Channel 16, VHF-FM) and, if the vessel is equipped to do so, the international distress and calling radio frequency 2.182 MHz (HF).

(3) The operator shall ensure that an up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

(4) When engaged in transshipment on the high seas or in an area under the jurisdiction of a member of the Commission other than the United States, the operator and crew shall:

(i) Provide any WCPFC transshipment monitor with full access to, and use of, facilities and equipment which such authorized person may determine is necessary to carry out his or her duties to monitor transshipment activities, including full access to the bridge, fish on board, and all areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying;

(ii) Allow and assist any WCPFC transshipment monitor to collect and remove samples and gather any other information required to fully monitor transshipment activities.

(iii) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC transshipment monitor in the performance of such person's duties, or attempt to do any of the same.

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(b) The operator and crew of a fishing vessel of the United States, when on the high seas in the Convention Area, shall be subject to the following requirements:

(1) The operator and crew shall immediately comply with instructions given by an officer on board a WCPFC inspection vessel to move the vessel to a safe location and/or to stop the vessel, provided that the officer has, prior to the issuance of such instructions:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator his or her intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(2) The operator and crew shall accept and facilitate prompt and safe boarding by any WCPFC inspector, provided that an officer on board the WCPFC inspection vessel has, prior to such boarding:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator an intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(3) Provided that the WCPFC inspector has presented to the vessel operator his or her identity card identifying him or her as an inspector authorized to carry out boarding and inspection procedures under the auspices of the Commission, and a copy of the text of the relevant conservation and management measures in force pursuant to the WCPFC Convention in the relevant area of the high seas, the operator and crew shall:

(i) Cooperate with and assist any WCPFC inspector in the inspection of the vessel, including its authorizations to fish, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and

management measures in force pursuant to the WCPFC Convention;

(ii) Allow any WCPFC inspector to communicate with the crew of the WCPFC inspection vessel, the authorities of the WCPFC inspection vessel and the authorities of the vessel being inspected;

(iii) Provide any WCPFC inspector with reasonable facilities, including, where appropriate, food and accommodation; and

(iv) Facilitate safe disembarkation by any WCPFC inspector.

(4) If the operator or crew refuses to allow a WCPFC inspector to board and inspect the vessel in the manner described in this paragraph, they shall offer to the WCPFC inspector an explanation of the reason for such refusal.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC inspector in the performance of such person's duties, or attempt to do any of the same.

(c) When a fishing vessel of the United States that is used for commercial fishing for HMS is in the Convention Area and is either on the high seas without a valid WCPFC Area Endorsement or is in an area under the jurisdiction of a nation other than the United States without an authorization by that nation to fish in that area, all the fishing gear and fishing equipment on the fishing vessel shall be stowed in a manner so as not to be readily available for fishing, specifically:

(1) If the fishing vessel is used for purse seining and equipped with purse seine gear, the boom must be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and the launches must be secured.

(2) If the fishing vessel is used for longlining and equipped with longline gear, the branch or dropper lines and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

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(3) If the fishing vessel is used for trolling and equipped with troll gear, no lines or hooks may be placed in the water; if outriggers are present on the vessel, they must be secured in a vertical position; if any power-operated haulers are located on deck they must be covered in such a manner that they are not readily available for use.

(4) If the fishing vessel is used for pole-and-line fishing and equipped with pole-and-line gear, any poles rigged with lines and hooks must be stowed in such a manner that they are not readily available for use.

(5) For any other type of fishing vessel, all the fishing gear and equipment on the vessel must be stowed in a manner so as not to be readily available for use.

(d) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

[75 FR 3354, Jan. 21, 2010]

### § 300.222 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Fail to obtain and have on board a fishing vessel a valid WCPFC Area Endorsement as required in § 300.212.

(b) Fail to report a change in the information required in an application for a WCPFC Area Endorsement as required in § 300.212(g).

(c) Fail to provide information on vessels and fishing authorizations or fail to report changes in such information as required in § 300.213.

(d) Fish for, retain on board, or land fish, including HMS, in areas under the jurisdiction of a nation other than the United States without authorization by such nation to do so, as provided in § 300.214(a)(1) and (b)(1).

(e) Operate a fishing vessel in violation of, or fail to ensure the vessel crew complies with, the applicable national laws of a member of the Commission other than the United States, including any laws related to carrying vessel observers or the operation of VMS units, as provided in § 300.214(a)(2) and (b)(2).

(f) Fail to carry, allow on board, or assist a WCPFC observer as required in § 300.215.

(g) Assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, or interfere with a WCPFC observer, or attempt to do any of the same, or fail to provide a WCPFC observer with food, accommodation or medical facilities, as required in § 300.215.

(h) Offload, receive, or load fish from a purse seine vessel at sea in the Convention Area, in contravention of § 300.216.

(i) Fail to mark a fishing vessel or a boat, skiff, or other watercraft on board the fishing vessel as required in § 300.217, or remove, obscure, or obstruct such markings, or attempt to do so.

(j) Fail to maintain and report catch and effort information or transshipment information as required in § 300.218.

(k) Fail to install, activate, or operate a VMS unit as required in § 300.219(c).

(l) In the event of VMS unit failure or interruption, fail to repair or replace a VMS unit, fail to notify the SAC and follow the instructions provided, or otherwise fail to act as provided in § 300.219(c)(4).

(m) Disable, destroy, damage or operate improperly a VMS unit installed under § 300.219, or attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.219(e).

(n) Fail to make a VMS unit installed under § 300.219 or the position data obtained from it available for inspection, as provided in § 300.219(f) and (g).

(o) Fail to carry on board and monitor communication devices as required in § 300.219(h).

(p) Fail to carry on board and make available the required vessel documentation and authorizations as required in § 300.221(a)(1).

(q) Fail to continuously monitor the specified radio frequencies as required in § 300.221(a)(2).

(r) Fail to carry on board, and keep accessible, an up-to-date copy of the International Code of Signals as required in § 300.221(a)(3).

(s) Fail to provide access to, or fail to allow and assist, a WCPFC transshipment monitor as required in § 300.221(a)(4).

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(t) Fail to comply with the instructions of, or fail to accept and facilitate prompt and safe boarding by, a WCPFC inspector, or fail to cooperate and assist a WCPFC inspector in the inspection of a fishing vessel, as provided in § 300.221(b).

(u) Fail to stow fishing gear or fishing equipment as required in § 300.223(b).

(v) Use a fishing vessel equipped with purse seine gear to fish in the ELAPS while the fishery is closed under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or deploy or service a FAD in contravention of § 300.223(b).

(x) Use a fishing vessel equipped with purse seine gear to fish in an area closed under § 300.223(c).

(y) Discard fish at sea in the ELAPS in contravention of § 300.223(d).

(z) Fail to carry an observer as required in § 300.223(e).

(aa) Fail to comply with the sea turtle mitigation gear and handling requirements of § 300.223(f).

(bb) Use a fishing vessel to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.224(f)(1) or (f)(2).

(cc) Use a fishing vessel to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.224(f)(3).

(dd) Fail to stow longline gear as required in § 300.224(f)(4).

[74 FR 38554, Aug. 4, 2009, as amended at 74 FR 64010, Dec. 7, 2009; 75 FR 3355, Jan. 21, 2010; 77 FR 51714, Aug. 27, 2012]

### § 300.223 Purse seine fishing restrictions.

All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: the year 2009 starts at 00:00 on January 1, 2009 UTC and ends at 24:00 on December 31, 2009 UTC; and August 1, 2009, begins at 00:00 UTC and ends at 24:00 UTC.

(a) *Fishing effort limits.* This section establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may collectively spend in the ELAPS.

(1) The limits are as follows:

(i) For each of the years 2009, 2010, 2011, and 2012 there is a limit of 3,882 fishing days.

(ii) For each of the two-year periods 2009–2010, 2010–2011, and 2011–2012, there is a limit of 6,470 fishing days.

(iii) For each of the three-year periods 2009–2011 and 2010–2012, there is a limit of 7,764 fishing days.

(2) NMFS will determine the number of fishing days spent in the ELAPS in each of the applicable time periods using data submitted in logbooks and other available information. After NMFS determines that the limit in any applicable time period is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a notice in the FEDERAL REGISTER announcing that the purse seine fishery in the ELAPS will be closed starting on that specific future date and will remain closed until the end of the applicable time period.

(3) Once a fishery closure is announced pursuant to paragraph (a)(2) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the ELAPS during the period specified in the FEDERAL REGISTER notice.

(b) *Use of fish aggregating devices.* From August 1 through September 30, 2009, and from July 1 through September 30 in each of 2010, 2011, and 2012, owners, operators, and crew of fishing vessels of the United States shall not do any of the following in the Convention Area:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD.

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD, such as by setting the purse seine in an area from which a FAD has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD.

(3) Deploy a FAD into the water.

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association



with a FAD, in the water or on a vessel while at sea, except that:

(i) A FAD may be inspected and handled as needed to identify the owner of the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(ii) A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(c) *Closed areas.* (1) Effective January 1, 2010, through December 31, 2012, a fishing vessel of the United States may not be used to fish with purse seine gear on the high seas within either Area A or Area B, the respective boundaries of which are the four lines connecting, in the most direct fashion, the coordinates specified as follows:

(i) Area A: 7° N. latitude and 134° E. longitude; 7° N. latitude and 153° E. longitude; 0° latitude and 153° E. longitude; and 0° latitude and 134° E. longitude.

(ii) Area B: 4° N. latitude and 156° E. longitude; 4° N. latitude and 176° E. longitude; 12° S. latitude and 176° E. longitude; and 12° S. latitude and 156° E. longitude.

(2) NMFS may, through publication of a notice in the FEDERAL REGISTER, nullify any or all of the area closures specified in paragraph (c)(1) of this section.

(d) *Catch retention.* (1) Based on its determination as to whether an adequate number of WCPFC observers is available for the purse seine vessels of all Members of the Commission as necessary to ensure compliance by such vessels with the catch retention requirements established by the Commission, NMFS will, through publication of a notice in the FEDERAL REGISTER, announce the effective date of the provisions of paragraph (d) of this section. The effective date will be no earlier than January 1, 2010.

(2) If, after announcing the effective date of the these requirements under paragraph (1) of this section, NMFS determines that there is no longer an adequate number of WCPFC observers available for the purse seine vessels of all Members of the Commission as necessary to ensure compliance by such vessels with the catch retention re-

quirements established by the Commission, NMFS may, through publication of a notice in the FEDERAL REGISTER, nullify any or all of the requirements specified in paragraph (d) of this section.

(3) Effective from the date announced pursuant to paragraph (d)(1) of this section through December 31, 2012, a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

(i) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(ii) If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(iii) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

(e) *Observer coverage.* (1) From August 1 through September 30, 2009, a fishing vessel of the United States that is equipped with purse seine gear may not be used to fish in the Convention Area without a WCPFC observer or an observer deployed by NMFS on board. This requirement does not apply to fishing trips that meet any of the following conditions:

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within areas under jurisdiction of a single nation other than the United States.

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

(iii) The Pacific Islands Regional Administrator has determined that an observer is not available for the fishing trip and a written copy of the Pacific Islands Regional Administrator's determination, which must include the

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approximate start date of the fishing trip and the port of departure, is carried on board the fishing vessel during the entirety of the fishing trip.

(2) Effective January 1, 2010, through December 31, 2012, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet any of the following conditions:

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within the areas under jurisdiction of a single nation other than the United States.

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

(iii) The Pacific Islands Regional Administrator has determined that a WCPFC observer is not available for the fishing trip and a written copy of the Pacific Islands Regional Administrator's determination, which must include the approximate start date of the fishing trip and the port of departure, is carried on board the fishing vessel during the entirety of the fishing trip.

(3) Owners, operators, and crew of fishing vessels subject to paragraphs (e)(1) or (e)(2) of this section must accommodate WCPFC observers in accordance with the provisions of § 300.215(c).

(4) Meeting any of the conditions in paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this section does not exempt a fishing vessel from having to carry and accommodate a WCPFC observer pursuant to § 300.215 or other applicable regulations.

(f) *Sea turtle take mitigation measures.*

(1) Possession and use of required mitigation gear. Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must carry aboard the vessel the following gear:

(i) *Dip net.* A dip net is intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of removing sea turtles from fishing gear, bringing sea turtles aboard the vessel when appropriate, and releasing

sea turtles from the vessel. The minimum design standards for dip nets that meet the requirements of this section are:

(A) *An extended reach handle.* The dip net must have an extended reach handle with a minimum length of 150 percent of the freeboard height. The extended reach handle must be made of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(B) *Size of dip net.* The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches 3 inches (7.62 cm 7.62 cm) in size.

(ii) *Optional turtle hoist.* A turtle hoist is used for the same purpose as a dip net. It is not a required piece of gear, but a turtle hoist may be carried on board and used instead of the dip net to handle sea turtles as required in paragraph (f)(2) of this section. The minimum design standards for turtle hoists that are used instead of dip nets to meet the requirements of this section are:

(A) *Frame and net.* The turtle hoist must consist of one or more rigid frames to which a bag of mesh netting is securely attached. The frame or smallest of the frames must have a minimum opening (e.g., inside diameter, if circular in shape) of 31 inches (78.74 cm) and be capable of supporting a minimum of 100 lb (34.1 kg). The frame or frames may be hinged or otherwise designed so they can be folded for ease of storage, provided that they have no sharp edges and can be quickly reassembled. The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm) in size.

(B) *Lines.* Lines used to lower and raise the frame and net must be securely attached to the frame in multiple places such that the frame remains stable when lowered and raised.

(2) *Handling requirements.* Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must, if a sea turtle is observed to be enclosed or entangled in a purse seine, a FAD, or other fishing

gear, comply with these handling requirements, including using the required mitigation gear specified in paragraph (f)(1) of this section as prescribed in these handling requirements. Any captured or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(i) *Sea turtles enclosed in purse seines.* If the sea turtle is observed enclosed in a purse seine but not entangled, it must be released immediately from the purse seine with the dip net or turtle hoist.

(ii) *Sea turtles entangled in purse seines.* If the sea turtle is observed entangled in a purse seine, the net roll must be stopped as soon as the sea turtle comes out of the water, and must not start again until the turtle has been disentangled and released. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iii) *Sea turtles entangled in FADs.* If the sea turtle is observed entangled in a FAD, it must be disentangled or the FAD must be cut immediately so as to remove the sea turtle. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iv) *Disentangled sea turtles that cannot be brought aboard.* After disentanglement, if the sea turtle is not already on board the vessel and it is too large to be brought aboard or cannot be brought aboard without sustaining further injury, it shall be left where it is in the water, or gently moved, using the dip net or turtle hoist if necessary, to an area away from the fishing gear and away from the propeller.

(v) *Disentangled sea turtles that can be brought aboard.* After disentanglement, if the sea turtle is not too large to be brought aboard and can be brought aboard without sustaining further injury, the following actions shall be taken:

(A) Using the dip net or a turtle hoist, the sea turtle must be brought aboard immediately; and

(B) The sea turtle must be handled in accordance with the procedures in

paragraphs (f)(2)(vi) and (f)(2)(vii) of this section.

(vi) *Sea turtle resuscitation.* If a sea turtle brought aboard appears dead or comatose, the following actions must be taken:

(A) The sea turtle must be placed on its belly (on the bottom shell or plastron) so that it is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(B) A reflex test must be administered at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(C) The sea turtle must be kept shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes (not covering the nostrils), carapace and flippers is the most effective method of keeping a sea turtle moist; and

(D) If the sea turtle revives and becomes active, it must be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section, unless NMFS requests that the turtle or part thereof be kept on board and delivered to NMFS for research purposes.

(vii) *Sea turtle release.* After handling a sea turtle in accordance with the requirements of paragraphs (f)(2)(v) and (f)(2)(vi) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(A) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped;

(B) Using the dip net or a turtle hoist to release the sea turtle with little impact, gently release the sea turtle away from any deployed gear; and

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(C) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(viii) *Other sea turtle requirements.* No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle or a part thereof for research.

[74 FR 38554, Aug. 4, 2009, as amended at 76 FR 82183, Dec. 30, 2011]

### § 300.224 Longline fishing restrictions.

(a) *Establishment of bigeye tuna catch limit.* There is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during the 2012 calendar year.

(b) *Exception for bigeye tuna landed in territories.* Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will be attributed to the longline fishery of the territory in which it is landed and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(c) *Exception for bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits.* Bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title will be attributed to the longline fishery of American Samoa and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(d) *Exception for bigeye tuna caught by vessels included in Section 113(a) arrange-*

*ments.* Bigeye tuna caught in 2012 by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112-55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, will be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the arrangement to the extent they are consistent with this section and applicable law, and will not be counted against the limit, provided that:

(1) NMFS has received a copy of the arrangement from the vessel owner or a designated representative at least 14 days prior to the date the bigeye tuna was caught, except that this requirement shall not apply to any arrangement provided to NMFS prior to the effective date of this paragraph;

(2) The bigeye tuna was caught on or after the “start date” specified in paragraph (g)(2) of this section; and

(3) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112-55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, in accordance with the criteria specified in paragraph (g)(3) of this section.

(e) *Announcement of catch limit being reached and fishing prohibitions.* NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the FEDERAL REGISTER announcing that specific prohibitions will be in effect starting on that specific future date and ending December 31, 2012.

(f) *Prohibitions after catch limit is reached.* Once an announcement is made pursuant to paragraph (e) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna

captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to §665.803(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under §660.707 or §665.801 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under §665.801(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under §660.707 or §665.801 of this title.

(iv) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, if the arrangement provides for the bigeye tuna when

caught to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) NMFS has received a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing), unless NMFS has received a copy of the arrangement prior to the effective date of this section;

(B) The “start date” specified in paragraph (g)(2) of this section has occurred or passed; and

(C) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, in accordance with the criteria specified in paragraph (g)(3) of this section.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under §660.707 or §665.801 of this title.

(3) A fishing vessel of the United States, other than a vessel that catches bigeye tuna catch that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands in accordance with paragraphs (b), (c), or (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to §665.803(a) of this title, that the current trip type is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (e) of this section, in which case the bigeye tuna on board the vessel may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(4) If a fishing vessel of the United States, other than a vessel that catches bigeye tuna catch that is to be attributed to the longline fishery of

American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, in accordance with paragraphs (b), (c), and (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(g) *Procedures and conditions for Section 113(a) arrangements.* This paragraph establishes procedures to be followed and conditions that must be met with respect to arrangements authorized under Section 113(a) of Public Law 112-55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012. These procedures and conditions apply to paragraphs (d), (f)(1)(iv), (f)(3), and (f)(4) of this section.

(1) For the purpose of this section, the “pre-Section 113(a) attribution forecast date” is the date the catch limit established under paragraph (a) of this section is forecast by NMFS to be reached, assuming that no catches would be attributed to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands under arrangements authorized under Section 113(a) of Public Law 112-55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012. Since forecasts are subject to change as new information becomes available, NMFS will use for this purpose the first forecast it prepares that indicates that the date of the limit being reached is less than 28 days after the date the forecast is prepared.

(2) For the purpose of this section, the “start date” for attribution of catches to the longline fisheries of American Samoa, Guam, or the Com-

monwealth of the Northern Mariana Islands for a particular arrangement is:

(i) For arrangements copies of which are received by NMFS no later than the date NMFS determines the pre-Section 113(a) attribution forecast date, seven days before the pre-Section 113(a) attribution forecast date; and

(ii) For arrangements copies of which are received by NMFS after the date NMFS determines the pre-Section 113(a) attribution forecast date, 14 days after the date that NMFS receives a copy of the arrangement or seven days before the pre-Section 113(a) attribution forecast date, whichever is later.

(3) NMFS will determine whether an arrangement satisfies the requirements of Section 113(a) of Public Law 112-55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, for the attribution of bigeye tuna to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands according to the following criteria:

(i) Vessels included under the arrangement must be registered for use with valid permits issued under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region;

(ii) The arrangement must not impose any requirements regarding where the vessels included in the arrangement fish or land their catch;

(iii) The arrangement must be signed by the owners of all the vessels included in the arrangement or their designated representative(s);

(iv) The arrangement must be signed by an authorized official of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands or his or her designated representative(s); and

(v) The arrangement must be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in the Marine Conservation Plan of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands adopted pursuant to section 204 of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) NMFS will notify the parties to the arrangement or their designated representative(s) within 14 days of receiving a copy of the arrangement, if

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the arrangement does not meet the criteria specified in paragraph (g)(3) of this section.

[77 FR 51714, Aug. 27, 2012]

### Subpart P—Vessels on IUU Vessel Lists

SOURCE: 75 FR 59142, Sept. 27, 2010, unless otherwise noted.

#### § 300.300 Purpose and scope.

(a) This subpart implements internationally-adopted measures pertaining to foreign vessels determined to have engaged in illegal, unreported, and unregulated (IUU) fishing and placed on IUU vessel lists of the:

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT),

(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),

(3) Northwest Atlantic Fisheries Organization (NAFO),

(4) Western and Central Pacific Fisheries Commission (WCPFC),

(5) Inter-American Tropical Tuna Commission (IATTC), and

(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP).

(b) For purposes of this subpart, the above organizations are referred to as regional fishery management organizations (RFMOs). Each of these RFMOs adopts or approves an IUU vessel list in accordance with their respective rules and procedures. The lists are publicly available at each RFMO's Web site. The regulations in this subpart apply to all persons subject to the jurisdiction of the United States, wherever they are.

#### § 300.301 Definitions.

In addition to the terms defined in § 300.2, the terms used in this subpart have the following meanings.

*Landing* means to begin to offload fish, or to offload fish from any vessel.

*Listed IUU Vessel* means a vessel that is included on a final IUU vessel list adopted or approved by an RFMO to which the United States is a party.

*Processing* means the preparation or packaging of fish to render it suitable

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for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil.

*Transshipping* means the offloading, unloading, or transferring of fish or fish products from one vessel to another.

#### § 300.302 Port entry by foreign, listed IUU vessels.

The Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, deny a foreign, listed IUU vessel entry to any port or place subject to the jurisdiction of the United States, except in cases of *force majeure*.

#### § 300.303 Port access by foreign, listed IUU vessels.

If a foreign, listed IUU vessel is allowed to enter a port or place subject to the jurisdiction of the United States, the Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, take one or more of the following actions:

(a) Inspect the vessel;

(b) Deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or

(c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, transshipping or landing product.

#### § 300.304 Prohibitions.

(a) It is unlawful for a foreign, listed IUU vessel denied entry under § 300.302 to enter any port or place subject to the jurisdiction of the United States.

(b) It is unlawful for any foreign, listed IUU vessel to obtain port services or engage in commercial transactions, or attempt to obtain such services or engage in such transactions, if such activities have been denied or prohibited under § 300.303(b) and/or § 300.303(c), or if the vessel has been denied entry under § 300.302.

(c) It is unlawful for any person, without prior authorization from the Assistant Administrator, to engage in

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commercial transactions with listed IUU vessels. Such transactions include, but are not limited to:

- (1) Transshipment;
- (2) Processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel;
- (3) Joint fishing operations;
- (4) Providing supplies, fuel, crew, or otherwise supporting a listed IUU vessel; or
- (5) Chartering or entering in a chartering arrangement with a listed IUU vessel.

(d) The prohibitions listed in §300.304(c) shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO conservation and management measures, including in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.





# CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

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## SUBCHAPTER A

### PART 401—ANADROMOUS FISHERIES CONSERVATION, DEVELOPMENT AND ENHANCEMENT

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AUTHORITY: Anadromous Fish Conservation Act (79 Stat. 1125, as amended, 84 Stat. 214, 88 Stat. 398), 16 U.S.C. 757a-757f.

SOURCE: 40 FR 26678, June 25, 1975, unless otherwise noted.

#### § 401.1 Administration.

The Director of the U.S. Fish and Wildlife Service and the Director of the National Marine Fisheries Service shall jointly administer the Anadromous Fish Conservation Act for the Secretaries.

#### § 401.2 Definitions.

As used in this part, terms shall have the meanings ascribed in this section.

(a) *Secretary*. The Secretary of Commerce, the Secretary of the Interior, or their authorized representatives.

(b) *Act*. The Anadromous Fish Conservation Act, 16 U.S.C. 757a through 757f.

(c) *Eligible states*. Any coastal State of the United States, the State of Vermont, and the States bordering the Great Lakes. The area within the Columbia River basin is excluded.

(d) *State fishery agency*. Any department(s), division(s), commis-

official(s) of a State empowered under its laws to regulate a commercial or sport fishery.

(e) *Non-Federal interest*. Any organization, association, institution, business, school, individual, or group of individuals, municipality and others outside the Federal Government, in addition to State fishery agencies, which desire to cooperate within the terms of the Act.

(f) *Cooperator*. One or more States acting jointly or severally or other non-Federal interests, participating in a project agreement or grant-in-aid award with the Secretary.

(g) *Anadromous fish*. Aquatic, gill breathing, vertebrate animals bearing paired fins which migrate to and spawn in fresh water, but which spend part of their life in an oceanic environment; also fish in the Great Lakes that ascend streams to spawn.

(h) *Application for Federal assistance*. A description of work to be accomplished, including objectives and needs, expected results and benefits, approach, cost, location and time required for completion.

(i) *Project agreement*. The formal document executed between the Secretary of the Interior and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

(j) *Grant-in-Aid award*. The formal document executed between the Secretary of Commerce and the Cooperator, committing the Cooperator to the performance of described activities and the Federal Government to participation in the financing of those activities.

#### § 401.3 Submission of documents.

Applications for Federal assistance and other documents for projects relating generally to recreational fisheries shall be submitted to the concerned Regional Office of the U.S. Fish and Wildlife Service, or for projects relating generally to commercial fisheries of the concerned Regional Office of the National Marine Fisheries Service.

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### **§ 401.4 Activities prohibited.**

Law enforcement, public relations, harvesting, marketing and processing activities, construction of fisherman use facilities, and activities concerned with landlocked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act.

### **§ 401.5 Coordination with States.**

The Secretary will approve an Application For Federal Assistance only after he has coordinated the application with the State office established to review applications under Executive Order 12372 (if the State has established such an office and wishes to review these applications) and other non-Federal entities which have management authority over the resource to be affected.

[48 FR 29137, June 24, 1983]

### **§ 401.6 Prosecution of work.**

(a) Project work shall be carried through to a state of completion acceptable to the Secretary with reasonable promptness. Failure to render satisfactory performance reports or failure to complete the project to the satisfaction of the Secretary shall be cause for suspension of Federal assistance for the project until the project provisions are satisfactorily met. Federal assistance may be terminated upon determination by the Secretary that satisfactory progress has not been maintained. The Secretary shall have the right to inspect and review work at any time.

(b) Research and development work shall be continuously coordinated by the Cooperator with studies conducted by others to avoid unnecessary duplication.

(c) All work shall be performed in accordance with applicable local laws, except when in conflict with Federal laws or regulations, in which case Federal laws or regulations shall prevail.

### **§ 401.7 General information for the Secretary.**

Before any Federal funds may be obligated for any project an applicant shall furnish to the Secretary, upon his request, information regarding the

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laws affecting anadromous fish and the authority of the applicant to participate in the benefits of the Act.

(a) *Document signature.* Individuals authorized to sign project documents under the Commercial Fisheries Research and Development Act of 1964 (78 Stat. 197, as amended), 16 U.S.C. 779 through 779f, or the Federal Aid in Sport Fish Restoration Act (64 Stat. 430, as amended), 16 U.S.C. 777 through 777f, may likewise sign project documents contemplated in this part.

(b) *Program information.* The Secretary may, from time to time, request, and the Cooperators shall furnish, information relating to the administration and maintenance of any project established under the Act.

### **§ 401.8 Availability of funds.**

The period of availability of funds to the States or other non-Federal interests for obligation shall be established by the administering Federal agency.

### **§ 401.9 Payments to cooperators.**

Payments shall be made to Cooperators in accordance with provisions of grant-in-aid awards or project agreements.

### **§ 401.10 Request for payment.**

Request for payment shall be on forms provided by the Secretary, certified as therein prescribed, and submitted to the Regional Director by the Cooperator.

### **§ 401.11 Property as matching funds.**

The non-Federal share of the cost of projects may be in the form of real or personal property. Specific procedures to be used by grantees in placing the value on real or personal property for matching funds are set forth in Attachment F of Federal Management Circular 74-7.

### **§ 401.12 Ownership of property.**

When real property is acquired pursuant to the provisions of the Act, title to such property, or interests therein, shall be vested in the United States, and the conveying instrument shall recite the United States of America as the grantee. However, if the Secretary determines that under the terms of the application for Federal assistance and

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grant-in-aid award or project agreement, the intent and purpose of the Act may be better served by other ownership of such property, an appropriate transfer may be made. When real or personal property is utilized as matching funds, title to such property shall be in the Cooperator unless otherwise specified in the grant-in-aid award or project agreement.

### **§ 401.13 Personnel.**

The Cooperator shall maintain an adequate and competent force of employees to initiate and carry approved work to satisfactory completion.

### **§ 401.14 Inspection.**

Cooperator supervision of each project shall include adequate and continuous inspection. The project will be subject at all times to Federal inspection.

### **§ 401.15 Record retention.**

All records of accounts and reports with supporting documentation thereto, as set forth in Attachment C of Federal Management Circular 74-7, will be retained by the Cooperator for a period of 3 years after submission of the final expenditure report on the project. Record retention for a period longer than 3 years is required if audit findings have not been resolved.

### **§ 401.16 Records and reporting.**

Performance reports and other reports shall be furnished as requested by the Secretary. Cost records shall be maintained separately for each project. The accounts and records maintained by the Cooperator, together with all supporting documents, shall be open at all times to the inspection of authorized representatives of the United States, and copies thereof shall be furnished when requested.

(Approved by the Office of Management and Budget under control number 0648-0102)

[40 FR 26678, June 25, 1975, as amended at 48 FR 57302, Dec. 29, 1983]

### **§ 401.17 Safety and accident prevention.**

In the performance of each project, the Cooperator shall comply with all applicable Federal, State, and local

laws governing safety, health and sanitation.

### **§ 401.18 Contracts.**

A Cooperator may use its own regulations or guidelines in obtaining services by contract or otherwise, provided that they adhere to applicable Federal laws, regulations, policies, guidelines, and requirements, as set forth in Attachment 0 of Federal Management Circular 74-7. However, the Cooperator is the responsible authority, without recourse to the Federal agency, regarding the settlement of such contractual issues.

### **§ 401.19 Statements and payrolls.**

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR part 3), made pursuant to the Copeland "Anti-Kick-back" Act (18 U.S.C. 874), as amended, are made a part of the regulations in this part by reference. The Cooperator will comply with the regulations in this part and any amendments or modifications thereof, and the Cooperator's prime contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitation, variations, tolerances, and exemptions.

### **§ 401.20 Officials not to benefit.**

No Member of, or Delegate to, Congress, or resident Commissioner, shall be admitted to any share or any part of any project agreement made under the Act, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

### **§ 401.21 Patents and inventions.**

Determination of the patent rights in any inventions or discoveries resulting from work under project agreements entered into pursuant to the Act shall be consistent with the "Government Patent Policy" (President's memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

## § 401.22

### § 401.22 Civil rights.

Each application for Federal assistance, grant-in-aid award, or project agreement shall be supported by a statement of assurances executed by the Cooperator providing that the project will be carried out in accordance with title VI, Nondiscrimination in federally Assisted Programs of the Civil Rights Act of 1964 and with the Secretary's regulations promulgated thereunder.

### § 401.23 Audits.

The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P OMB Circular A-102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

[49 FR 30074, July 26, 1984]

## PART 402—INTERAGENCY CO-OPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

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AUTHORITY: 16 U.S.C. 1531 *et seq.*

SOURCE: 51 FR 19957, June 3, 1986, unless otherwise noted.

### Subpart A—General

#### § 402.01 Scope.

(a) This part interprets and implements sections 7(a)–(d) [16 U.S.C. 1536(a)–(d)] of the Endangered Species Act of 1973, as amended (“Act”). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants (“listed species”) and habitat of such species that has been designated as critical (“critical habitat”). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that

any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat. Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in § 404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)-(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR part 451, and regulations governing the exemption process are found at 50 CFR parts 450, 452, and 453.

(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR

17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

#### § 402.02 Definitions.

*Act* means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

*Action* means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to:

- (a) actions intended to conserve listed species or their habitat;
- (b) the promulgation of regulations;
- (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
- (d) actions directly or indirectly causing modifications to the land, water, or air.

*Action area* means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

*Applicant* refers to any person, as defined in section 3(13) of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

*Biological assessment* refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

*Biological opinion* is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

*Conference* is a process which involves informal discussions between a Federal agency and the Service under section



7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

*Conservation recommendations* are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

*Critical habitat* refers to an area designated as critical habitat listed in 50 CFR parts 17 or 226.

*Cumulative effects* are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

*Designated non-Federal representative* refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

*Destruction or adverse modification* means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

*Director* refers to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service regional director, or his authorized representative, for the region where the action would be carried out.

*Early consultation* is a process requested by a Federal agency on behalf of a prospective applicant under section 7(a)(3) of the Act.

*Effects of the action* refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated

impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

*Formal consultation* is a process between the Service and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

*Incidental take* refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

*Informal consultation* is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

*Jeopardize the continued existence of* means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

*Listed species* means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

*Major construction activity* is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)].

*Preliminary biological opinion* refers to an opinion issued as a result of early consultation.

*Proposed critical habitat* means habitat proposed in the FEDERAL REGISTER to be designated or revised as critical habitat under section 4 of the Act for any listed or proposed species.

*Proposed species* means any species of fish, wildlife, or plant that is proposed in the FEDERAL REGISTER to be listed under section 4 of the Act.

*Reasonable and prudent alternatives* refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

*Reasonable and prudent measures* refer to those actions the Director believes necessary or appropriate to minimize the impacts, *i.e.*, amount or extent, of incidental take.

*Recovery* means improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.

*Service* means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

[51 FR 19957, June 3, 1986, as amended at 73 FR 76286, Dec 16, 2008; 74 FR 20422, May 4, 2009]

#### § 402.03 Applicability.

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

[74 FR 20423, May 4, 2009]

#### § 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries

Service. Such counterpart regulations shall be published in the FEDERAL REGISTER in proposed form and shall be subject to public comment for at least 60 days before final rules are published.

#### § 402.05 Emergencies.

(a) Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

(b) Formal consultation shall be initiated as soon as practicable after the emergency is under control. The Federal agency shall submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. The Service will evaluate such information and issue a biological opinion including the information and recommendations given during the emergency consultation.

#### § 402.06 Coordination with other environmental reviews.

(a) Consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*, implemented at 40 CFR Parts 1500–1508) or the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*). Satisfying the requirements of these other statutes, however, does not in itself relieve a Federal agency of its obligations to comply with the procedures set forth in this part or the substantive requirements of section 7. The Service will attempt to provide a coordinated review and analysis of all environmental requirements.

(b) Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA

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or FWCA, the results should be included in the documents required by those statutes.

#### **§ 402.07 Designation of lead agency.**

When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.

#### **§ 402.08 Designation of non-Federal representative.**

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Director of such designation. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and Federal agency must agree on the choice of the designated non-Federal representative. If a biological assessment is prepared by the designated non-Federal representative, the Federal agency shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment. The ultimate responsibility for compliance with section 7 remains with the Federal agency.

#### **§ 402.09 Irreversible or irretrievable commitment of resources.**

After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satis-

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fied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under section 7(a)(4) of the Act.

### **Subpart B—Consultation Procedures**

#### **§ 402.10 Conference on proposed species or proposed critical habitat.**

(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.

(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.

(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.

(d) If requested by the Federal agency and deemed appropriate by the Service, the conference may be conducted in accordance with the procedures for formal consultation in § 402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only

if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.

(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

#### § 402.11 Early consultation.

(a) *Purpose.* Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.

(b) *Request by prospective applicant.* If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.

(c) *Initiation of early consultation.* If the Federal agency receives the prospective applicant's certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in § 402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in § 402.12.

(d) *Procedures and responsibilities.* The procedures and responsibilities for early consultation are the same as outlined in § 402.14(c)–(j) for formal consultation, except that all references to the “applicant” shall be treated as the “prospective applicant” and all references to the “biological opinion” or the “opinion” shall be treated as the “preliminary biological opinion” for the purpose of this section.

(e) *Preliminary biological opinion.* The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.

(f) *Confirmation of preliminary biological opinion as final biological opinion.* A preliminary biological opinion may be confirmed as a biological opinion issued after formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency's request, the Service shall either:

- (1) Confirm that the preliminary biological opinion stands as a final biological opinion; or
- (2) If the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

#### § 402.12 Biological assessments.

(a) *Purpose.* A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

(b) *Preparation requirement.* (1) The procedures of this section are required

for Federal actions that are “major construction activities”; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared.

(2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

(c) *Request for information.* The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.

(d) *Director’s response.* Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.

(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need

not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under § 402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service’s opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

(e) *Verification of current accuracy of species list.* If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.

(f) *Contents.* The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:

(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.

(2) The views of recognized experts on the species at issue.

(3) A review of the literature and other information.

(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.

(5) An analysis of alternate actions considered by the Federal agency for the proposed action.

(g) *Incorporation by reference.* If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:

(1) The proposed action involves similar impacts to the same species in the same geographic area;

(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and

(3) The biological assessment has been supplemented with any relevant changes in information.

(h) *Permit requirements.* If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and part 17 of this title (with respect to species under the jurisdiction of the FWS) or parts 220, 222, and 227 of this title (with respect to species under the jurisdiction of the NMFS) is required.

(i) *Completion time.* The Federal agency or the designated non-Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(j) *Submission of biological assessment.* The Federal agency shall submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment.

At the option of the Federal agency, formal consultation may be initiated under § 402.14(c) concurrently with the submission of the assessment.

(k) *Use of the biological assessment.* (1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under § 402.14 or § 402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.

(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

#### § 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

[74 FR 20423, May 4, 2009]

**§ 402.14 Formal consultation.**

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under § 402.12 or as a result of informal consultation with the Service under § 402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

(2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under § 402.11, is confirmed as the final biological opinion.

(c) *Initiation of formal consultation.* A written request to initiate formal consultation shall be submitted to the Director and shall include:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action;

(3) A description of any listed species or critical habitat that may be affected by the action;

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat.

Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with § 402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) *Responsibility to provide best scientific and commercial data available.* The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.

(e) *Duration and extension of formal consultation.* Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:

(1) The reasons why a longer period is required,

(2) The information that is required to complete the consultation, and

(3) The estimated date on which the consultation will be completed.

A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.

(f) *Additional data.* When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to § 402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service's request for additional data is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion using the best scientific and commercial data available.

(g) *Service responsibilities.* Service responsibilities during formal consultation are as follows:

(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.

(2) Evaluate the current status of the listed species or critical habitat.

(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.

(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

(5) Discuss with the Federal agency and any applicant the Service's review and evaluation conducted under paragraphs (g)(1) through (3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2).

The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives. If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) *Biological opinions.* The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species



or result in the destruction or adverse modification of critical habitat (a “jeopardy biological opinion”); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “no jeopardy” biological opinion). A “jeopardy” biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) *Incidental take.* (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;

(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraphs (i)(1)(ii) and (i)(1)(iii) of this section; and

(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.

(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinstate consultation immediately.

(5) Any taking which is subject to a statement as specified in paragraph (i)(1) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.

(j) *Conservation recommendations.* The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.

(k) *Incremental steps.* When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:

(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);

(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;

(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;

(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and

(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(1) *Termination of consultation.* (1) Formal consultation is terminated with the issuance of the biological opinion.

(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.

(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated.

[51 FR 19957, June 3, 1986, as amended at 54 FR 40350, Sept. 29, 1989; 73 FR 76287, Dec 16, 2008; 74 FR 20423, May 4, 2009]

#### **§ 402.15 Responsibilities of Federal agency following issuance of a biological opinion.**

(a) Following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its section 7 obligations and the Service's biological opinion.

(b) If a jeopardy biological opinion is issued, the Federal agency shall notify the Service of its final decision on the action.

(c) If the Federal agency determines that it cannot comply with the requirements of section 7(a)(2) after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR part 451.

#### **§ 402.16 Reinitiation of formal consultation.**

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

(a) If the amount or extent of taking specified in the incidental take statement is exceeded;

(b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner

or to an extent not previously considered;

(c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or

(d) If a new species is listed or critical habitat designated that may be affected by the identified action.

### **Subpart C—Counterpart Regulations for Implementing the National Fire Plan**

SOURCE: 68 FR 68264, Dec. 8, 2003, unless otherwise noted.

#### **§ 402.30 Definitions.**

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

*Action Agency* refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

*Alternative Consultation Agreement* (ACA) is the agreement described in § 402.33 of this subpart.

*Fire Plan Project* is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

*National Fire Plan* (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled "Managing the Impact of Wildfire on Communities and the Environment" outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

*Service Director* refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

#### **§ 402.31 Purpose.**

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for

## § 402.32

Fire Plan Projects by providing an optional alternative to the procedures found in §§ 402.13 and 402.14(b) of this part. These regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the Service, as described in § 402.33, which will allow the Action Agency to determine that a Fire Plan Project is “not likely to adversely affect” (NLAA) a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA, as described in § 402.33, completes the Action Agency’s statutory obligation to consult with the Service for that Project. In situations where the Action Agency does not make an NLAA determination under the ACA, the Action Agency would still be required to conduct formal consultation with the Service when required by § 402.14. This process will be as protective to listed species and designated critical habitat as the process established in subpart B of this part. The standards and requirements for formal consultation under subpart B for Fire Plan Projects that do not receive an NLAA determination are unchanged.

## § 402.32 Scope.

(a) Section 402.33 establishes a process by which an Action Agency may determine that a proposed Fire Plan Project is not likely to adversely affect any listed species or designated critical habitat without conducting formal or informal consultation or obtaining written concurrence from the Service.

(b) Section 402.34 establishes the Service’s oversight responsibility and the standard for review under this subpart.

(c) Nothing in this subpart C precludes an Action Agency at its discretion from initiating early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14, respectively.

(d) The authority granted in this subpart is applicable to an Action Agency only where the Action Agency has entered into an ACA with the Service. An ACA entered into with one Service is valid with regard to listed species and designated critical habitat under the

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jurisdiction of that Service whether or not the Action Agency has entered into an ACA with the other Service.

## § 402.33 Procedures.

(a) The Action Agency may make an NLAA determination for a Fire Plan Project without informal consultation or written concurrence from the Director if the Action Agency has entered into and implemented an ACA. The Action Agency need not initiate formal consultation on a Fire Plan Project if the Action Agency has made an NLAA determination for the Project under this subpart. The Action Agency and the Service will use the following procedures in establishing an ACA.

(1) *Initiation:* The Action Agency submits a written notification to the Service Director of its intent to enter into an ACA.

(2) *Development and Adoption of the Alternative Consultation Agreement:* The Action Agency enters into an ACA with the Service Director. The ACA will, at a minimum, include the following components:

(i) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations under this subpart C.

(ii) Procedures for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency.

(iii) A description of the standards the Action Agency will apply in assessing the effects of the action, including direct and indirect effects of the action and effects of any actions that are interrelated or interdependent with the proposed action.

(iv) Provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency’s effects analysis of proposed actions.

(v) A mutually agreed upon program for monitoring and periodic program evaluation to occur at the end of the first year following signature of the ACA and periodically thereafter.

(vi) Provisions for the Action Agency to maintain a list of Fire Plan Projects for which the Action Agency has made

NLAA determinations. The Action Agency will also maintain the necessary records to allow the Service to complete the periodic program evaluations.

(3) *Training*: Upon completion of the ACA, the Action Agency and the Service will implement the training program outlined in the ACA to the mutual satisfaction of the Action Agency and the Service.

(b) The Action Agency may, at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public through a notice of availability in the FEDERAL REGISTER.

#### § 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this subpart by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency's implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

### Subpart D—Counterpart Regulations Governing Actions by the U.S. Environmental Protection Agency Under the Federal Insecticide, Fungicide and Rodenticide Act

SOURCE: 69 FR 47759, Aug. 5, 2004, unless otherwise noted.

#### § 402.40 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

(a) *Alternative consultation agreement* is the agreement described in § 402.45.

(b) *Effects determination* is a written determination by the U.S. Environmental Protection Agency (EPA) addressing the effects of a FIFRA action on listed species or critical habitat. The contents of an effects determination will depend on the nature of the action. An effects determination submitted under § 402.46 or § 402.47 shall contain the information described in § 402.14(c)(1)–(6) and a summary of the information on which the determination is based, detailing how the FIFRA action affects the listed species or critical habitat. EPA may consider the following additional sections for inclusion in an effects determination:

(1) A conclusion whether or not the FIFRA action is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat and a description of any reasonable and prudent alternatives that may be available;

(2) A description of the impact of any anticipated incidental taking of such listed species resulting from the FIFRA action, reasonable and prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions necessary to implement such measures; and

(3) A summary of any information or recommendations from an applicant. An effects determination shall be based on the best scientific and commercial data available.

(c) *FIFRA action* is an action by EPA to approve, permit or authorize the sale, distribution or use of a pesticide

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under sections 136–136y of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.* (FIFRA). In any consultation under this subpart, EPA shall determine the nature and scope of a FIFRA action.

(d) *Listed species* is a species listed as endangered or threatened under section 4 of the Act.

(e) *Partial biological opinion* is the document provided under § 402.47(a), pending the conclusion of consultation under § 402.47(b), stating the opinion of the Service as to whether or not a FIFRA action is likely to jeopardize the continued existence of one or more listed species or result in the destruction or adverse modification of one or more critical habitats, and describing the impact of any anticipated incidental taking of such listed species resulting from the FIFRA action, reasonable and prudent measures considered necessary or appropriate to minimize such impact, and terms and conditions necessary to implement such measures.

(f) *Service Director* refers to the Director of the U.S. Fish and Wildlife Service or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

(g) *Service Representative* is the person or persons designated to participate in advance coordination as provided in this subpart.

#### § 402.41 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the existing consultation process under section 7 of the Endangered Species Act (Act), 16 U.S.C. 1531 *et seq.*, by providing Fish and Wildlife Service and the National Marine Fisheries Service (referred to jointly as “Services” and individually as “Service”) and EPA with additional means to satisfy the requirements of section 7(a)(2) of the Act for certain regulatory actions under FIFRA. These additional means will permit the Services and EPA to more effectively use the scientific and commercial data generated through the FIFRA regulatory process as part of the best scientific and commercial data available to protect listed species and critical habitat. The procedures authorized by these counterpart regulations will be as protective of list-

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ed species and critical habitat as the process established in subpart B of this part.

#### § 402.42 Scope and applicability.

(a) *Available consultation procedures.* This subpart describes consultation procedures available to EPA to satisfy the obligations of section 7(a)(2) of the Act in addition to those in subpart B of this part for FIFRA actions authorized, funded, or carried out by EPA in which EPA has discretionary Federal involvement or control. EPA retains discretion to initiate early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14 for any FIFRA action. The procedures in this subpart may be employed for FIFRA actions as follows:

(1) Interagency exchanges of information under § 402.43 and advance coordination under § 402.44 are available for any FIFRA action.

(2) Alternative consultation under § 402.45 is available for a listed species or critical habitat if EPA determines the FIFRA action is not likely to adversely affect the listed species or critical habitat.

(3) Optional formal consultation under § 402.46 is available for any FIFRA action with respect to any listed species or critical habitat.

(4) The special procedures in § 402.47 are available for consultations on FIFRA actions that will be unusually complex due to factors such as the geographic area or number of species that may be affected by the action.

(5) EPA shall engage in consultation as to all listed species and critical habitat that may be affected by a FIFRA action, and may in its discretion employ more than one of the available consultation procedures for a FIFRA action that may affect more than one listed species or critical habitat.

(6) EPA shall engage in consultation on actions involving requests for emergency exemptions under section 18 of FIFRA that may affect listed species or critical habitat, and may choose to do so under § 402.05 or other provisions of this subpart or subpart B of this part. Any required formal consultation shall be initiated as soon as practicable after the emergency is under control.

For the purposes of § 402.05(b) the definition of formal consultation in § 402.02 includes the procedures in § 402.46.

(7) EPA must prepare a biological assessment for a FIFRA action to the extent required by § 402.12.

(8) EPA must comply with § 402.15 for all FIFRA actions.

(9) After a consultation under this subpart has been concluded, EPA shall reinitiate consultation as required by § 402.16 as soon as practicable after a circumstance requiring reinitiation occurs, and may employ the procedures in this subpart or subpart B of this part in any reinitiated consultation.

(b) *Exchanges of scientific information.* As part of any of the additional consultation procedures provided in this subpart, EPA and the Services shall establish mutually-agreeable procedures for regular and timely exchanges of scientific information to achieve accurate and informed decision-making under this subpart and to ensure that the FIFRA process considers the best scientific and commercial data available on listed species and critical habitat in a manner consistent with the requirements of FIFRA and ESA.

#### **§ 402.43 Interagency exchanges of information.**

EPA may convey to the Service a written request for a list of any listed species or critical habitat that may be present in any area that may be affected by a FIFRA action. Within 30 days of receipt of such a request the Service shall advise EPA in writing whether, based on the best scientific and commercial data available, any listed species or critical habitat may be present in any such area. EPA may thereafter request the Service to provide available information (or references thereto) describing the applicable environmental baseline for each species or habitat that EPA determines may be affected by a FIFRA action, and the Service shall provide such information within 30 days of the request.

#### **§ 402.44 Advance coordination for FIFRA actions.**

(a) *Advance coordination.* EPA may request the Service to designate a Service Representative to work with

EPA in the development of an effects determination for one or more listed species or critical habitat. EPA shall make such a request in writing and shall provide sufficient detail as to a FIFRA action planned for consultation to enable the Service to designate a representative with appropriate training and experience who shall normally be available to complete advance coordination with EPA within 60 days of the date of designation. Within 14 days of receiving such a request, the Service shall advise EPA of the designated Service Representative.

(b) *Participation of Service Representative in preparation of effects determination.* The Service Representative designated under paragraph (a) of this section shall participate with EPA staff in the preparation of the effects determination identified under paragraph (a) of this section. EPA shall use its best efforts to include the designated Service Representative in all relevant discussions on the effects determination, to provide the designated Service Representative with access to all documentation used to prepare the effects determination, and to provide the designated Service Representative office and staff support sufficient to allow the Service Representative to participate meaningfully in the preparation of the effects determination. EPA shall consider all information timely identified by the designated Service Representative during the preparation of the effects determination.

#### **§ 402.45 Alternative consultation on FIFRA actions that are not likely to adversely affect listed species or critical habitat.**

(a) *Consultation obligations for FIFRA actions that are not likely to adversely affect listed species or critical habitat when alternative consultation agreement is in effect.* If EPA and the Service have entered into an alternative consultation agreement as provided below, EPA may make a determination that a FIFRA action is not likely to adversely affect a listed species or critical habitat without informal consultation or written concurrence from the Director, and upon making such a determination for a listed species or critical habitat, EPA

need not initiate any additional consultation on that FIFRA action as to that listed species or critical habitat. As part of any subsequent request for formal consultation on that FIFRA action under this subpart or subpart B of this part, EPA shall include a list of all listed species and critical habitat for which EPA has concluded consultation under this section.

(b) *Procedures for adopting and implementing an alternative consultation agreement.* EPA and the Service may enter into an alternative consultation agreement using the following procedures:

(1) *Initiation.* EPA submits a written notification to the Service Director of its intent to enter into an alternative consultation agreement.

(2) *Required contents of the alternative consultation agreement.* The alternative consultation agreement will, at a minimum, include the following components:

(i) *Adequacy of EPA Determinations under the ESA.* The alternative consultation agreement shall describe actions that EPA and the Service have taken to ensure that EPA's determinations regarding the effects of its actions on listed species or critical habitat are consistent with the ESA and applicable implementing regulations.

(ii) *Training.* The alternative consultation agreement shall describe actions that EPA and the Service intend to take to ensure that EPA and Service personnel are adequately trained to carry out their respective roles under the alternative consultation agreement. The alternative consultation agreement shall provide that all effects determinations made by EPA under this subpart have been reviewed and concurred on by an EPA staff member who holds a current certification as having received appropriate training under the alternative consultation agreement.

(iii) *Incorporation of new information.* The alternative consultation agreement shall describe processes that EPA and the Service intend to use to ensure that new information relevant to EPA's effects determinations is timely and appropriately considered.

(iv) *Incorporation of scientific advances.* The alternative consultation

agreement shall describe processes that EPA and the Service intend to use to ensure that the ecological risk assessment methodologies supporting EPA's effects determinations incorporate relevant scientific advances.

(v) *Oversight.* The alternative consultation agreement shall describe the program and associated record keeping procedures that the Service and EPA intend to use to evaluate EPA's processes for making effects determinations consistent with these regulations and the alternative consultation agreement. The alternative consultation agreement shall provide that the Service's oversight will be based on periodic evaluation of EPA's program for making effects determinations under this subpart. Periodic program evaluation will occur at the end of the first year following signature of the alternative consultation agreement and should normally occur at least every five years thereafter.

(vi) *Records.* The alternative consultation agreement shall include a provision for EPA to maintain a list of FIFRA actions for which EPA has made determinations under this section and to provide the list to the Service on request. EPA will also maintain the necessary records to allow the Service to complete program evaluations.

(vii) *Review of Alternative Consultation Agreement.* The alternative consultation agreement shall include provisions for regular review and, as appropriate, modification of the agreement by EPA and the Service, and for departure from its terms in a particular case to the extent deemed necessary by both EPA and the Service.

(3) *Training.* After EPA and the Service enter into the alternative consultation agreement, EPA and the Service will implement the training program outlined in the alternative consultation agreement to the mutual satisfaction of EPA and the Service.

(4) *Public availability.* The alternative consultation agreement and any related oversight or monitoring reports shall be made available to the public to the extent provided by law.

(c) *Oversight of alternative consultation agreement implementation.* Through the program evaluations set forth in the

alternative consultation agreement, the Service will determine whether the implementation of this section by EPA is consistent with the best scientific and commercial information available, the ESA, and applicable implementing regulations. The Service Director may use the results of the program evaluations described in the alternative consultation agreement to recommend changes to EPA's implementation of the alternative consultation agreement. The Service Director retains discretion to terminate or suspend the alternative consultation agreement if, in using the procedures in this subpart, EPA fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the alternative consultation agreement. Termination, suspension, or modification of an alternative consultation agreement does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

**§ 402.46 Optional formal consultation procedure for FIFRA actions.**

(a) *Initiation of consultation.* EPA may initiate consultation on a FIFRA action under this section by delivering to the Service a written request for consultation. The written request shall be accompanied by an effects determination as defined in § 402.40(b) and a list or summary of all references and data relied upon in the determination. All such references and data shall be made available to the Service on request and shall constitute part of the Service's administrative record for the consultation. The time for conclusion of the consultation under section 7(b)(1) of the Act is calculated from the date the Service receives the written request from EPA. Any subsequent interchanges regarding EPA's submission, including interchanges about the completeness of the effects determination, shall occur during consultation and do not extend the time for conclusion of the consultation unless EPA withdraws the request for consultation.

(b) *Additional information determination.* For an effects determination prepared without advance coordination under § 402.44, the Service may determine that additional available information would provide a better informa-

tion base for the effects determination, in which case the Service Director shall notify the EPA Administrator within 45 days of the date the Service receives the effects determination. The notification shall describe such additional information in detail, and shall identify a means for obtaining that information within the time period available for consultation. EPA shall provide a copy of the Service Director's notification to any applicant. EPA may thereafter revise its effects determination, and may resubmit the revised effects determination to the Service. If EPA advises the Service it will not resubmit a revised effects determination to the Service, its initiation of consultation on the effects determination is deemed withdrawn.

(c) *Service responsibilities.* (1) Within the later of 90 days of the date the Service receives EPA's written request for consultation or 45 days of the date the Service receives an effects determination resubmitted under paragraph (b) of this section, and consistent with section 7(b)(1) of the Act, the Service shall take one of the following actions:

(i) If the Service finds that the effects determination contains the information required by § 402.40(b) and satisfies the requirements of section 7(b)(4) of the Act, and the Service concludes that the FIFRA action that is the subject of the consultation complies with section 7(a)(2) of the Act, the Service will issue a written statement adopting the effects determination; or

(ii) The Service will provide EPA a draft of a written statement modifying the effects determination, which shall meet the requirements of § 402.14(i), and as modified adopting the effects determination, and shall provide a detailed explanation of the scientific and commercial data and rationale supporting any modification it makes; or

(iii) The Service will provide EPA a draft of a biological opinion finding that the FIFRA action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat, and describing any reasonable and prudent alternatives if available.



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(2) If the Service acts under paragraphs (c)(1)(ii) or (c)(1)(iii) of this section, EPA shall, on request from an applicant, provide the applicant a copy of the draft written statement or draft biological opinion received from the Service. The Service shall at the request of EPA or an applicant discuss with EPA and the applicant the Service's review and evaluation under this section, and the basis for its findings. EPA and any applicant may submit written comments to the Service within 30 days after EPA receives the draft written statement or opinion from the Service unless the Service, EPA and any applicant agree to an extended deadline consistent with section 7(b)(1) of the Act.

(3) The Service will issue a final written statement or final biological opinion within 45 days after EPA receives the draft statement or opinion from the Service unless the deadline is extended under section 7(b)(1) of the Act.

(d) *Opinion of the Secretary.* The written statement or opinion by the Service under paragraphs (c)(1) or (c)(3) of this section shall constitute the opinion of the Secretary and the incidental take statement, reasonable and prudent measures, and terms and conditions under section 7(b) of the Act.

(e) *Delegation of Authority for Service decisions.* Any written statement modifying an effects determination or any biological opinion issued under this section shall be signed by the Service Director and such authority may not be delegated below the level of Assistant Director for Endangered Species (FWS) or Director of Office of Protected Resources (NOAA Fisheries).

#### § 402.47 Special consultation procedures for complex FIFRA actions.

(a) *Successive effects determinations.* If EPA determines after conferring with the Service that consultation on a FIFRA action will be unusually complex due to factors such as the geographic area or number of species that may be affected by the action, EPA may address the effects of the action through successive effects determinations under this subpart addressing groupings or categories of species or habitats as established by EPA. EPA may initiate consultation based upon

each such effects determination using the procedure in § 402.46(a), and the provisions of § 402.46(b) and (c) shall apply to any such consultation. When consultation is conducted under this section, the written statement or opinion provided by the Service under § 402.46(c) constitutes a partial biological opinion as to the species or habitats that are the subject of the consultation. While not constituting completion of consultation under section 7(a)(2), EPA retains authority to use such a partial biological opinion along with other available information in making a finding under section 7(d) of the Act.

(b) *Opinion of the Secretary.* After conclusion of all consultation on the FIFRA action, the partial biological opinions issued under paragraph (a) of this section shall then collectively constitute the opinion of the Secretary and the incidental take statement, reasonable and prudent measures, and terms and conditions under section 7(b) of the Act except to the extent a partial biological opinion is modified by the Service in accordance with the procedures in § 402.46(c). The Service shall so advise EPA in writing upon issuance of the last partial biological opinion for the consultation.

#### § 402.48 Conference on proposed species or proposed critical habitat.

EPA may employ the procedures described in § 402.10 to confer on any species proposed for listing or any habitat proposed for designation as critical habitat. For the purposes of § 402.10(d), the procedures in § 402.46 are a permissible form of formal consultation.

#### PART 403—TRANSFER OF MARINE MAMMAL MANAGEMENT AUTHORITY TO STATES

##### Sec.

- 403.01 Purpose and scope of regulations.
- 403.02 Definitions.
- 403.03 Review and approval of State request for management authority.
- 403.04 Determinations and hearings under section 109(c) of the MMPA.
- 403.05 State and Federal responsibilities after transfer of management authority.
- 403.06 Monitoring and review of State management program.
- 403.07 Revocation and return of State management authority.

## FWS, DOI, and NOAA, Commerce

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403.08 List of States to which management has been transferred.

AUTHORITY: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

SOURCE: 48 FR 22456, May 18, 1983, unless otherwise noted.

### § 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this part shall prevent:

(1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with §18.22 or §216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§ 403.03, 403.06, and 403.07 of this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

### § 403.02 Definitions.

The following definitions apply to this part:

(a) The term *species* includes any population stock.

(b) *Optimum Sustainable Population* or *OSP* means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is

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

(c) *State management program* means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) *State regulation* means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

(e) The *Act* means the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

(f) The *Secretary* means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members, other than walrus, of the order Pinnipedia; the Secretary of the Interior has jurisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The *Service* or *Services* means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this part to be made by the "Service" must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegates, as appropriate.

### § 403.03 Review and approval of State request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under

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the jurisdiction of the FWS, or to the Assistant Administrator for Fisheries of the National Marine Fisheries Service (“Assistant Administrator”) for species of marine mammals under the jurisdiction of the NMFS. The request must include:

(1) Copies of existing and proposed statutes, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraphs (d) (1) through (3) of this section;

(2) A narrative discussion of the statutes, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this part; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions of state law concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Do not permit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 403.04 of this part, has determined that the species is at its Optimum Sustainable Population (OSP) and determined the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, when a species is below OSP, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 403.05(a) of this part, is implemented;

(iii) Do not permit take in excess of the maximum number of animals that may be taken as determined pursuant to § 403.04 of this part; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d) of this section, and if the species is below OSP, any level of take allowed for subsistence use shall permit the species to increase toward OSP;

(iv) Do not permit take that is for scientific research or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under § 18.31 or § 216.31 of this title; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act.

(3) Provisions for annually acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if warranted on the basis of such evaluation, for requiring reevaluations of OSP and maximum allowable take determinations pursuant to § 403.04.

(4) Procedures for the resolution of differences between the state and the appropriate Service that might arise during the development of a cooperative allocation agreement pursuant to § 403.05(a) of this part.

(5) Procedures for the submission of an annual report meeting the requirements of § 403.06(b) of this part to the appropriate Service regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to:

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Service may request or which the state may deem necessary or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following concerning subsistence use of the species—

(1) A statute and regulations concerning the take of marine mammals that ensure that

(i) The taking of marine mammal species for subsistence uses will be the priority consumptive uses of the species;

(ii) If restrictions on subsistence uses of the species are required, such restrictions shall be based upon the customary and direct dependence upon the species as the mainstay of livelihood, local residency, and the availability of alternative resources; and

(iii) The taking of marine mammal species for subsistence uses is accomplished in a non-wasteful manner;

(2) Statutes or regulations that ensure that the appropriate state agency will—

(i) Authorize nonsubsistence consumptive uses of a marine mammal species only if such uses will have no significant adverse impact on subsistence uses of the species;

(ii) Regulate nonsubsistence consumptive uses in a manner which, to the maximum extent practicable, provides economic opportunities, including, but not limited to, licensing of marine mammal hunting guides and the

assignment of guiding areas, for residents of rural coastal villages of Alaska who engage in subsistence uses of the species; and

(iii) Make written findings supporting the authorizations and regulations described in this paragraph based solely on the administrative record before the agency;

(3) A narrative discussion of the statutes or regulations required under paragraph (d)(2) of this section, and any additional policies or procedures concerning the regulation of nonsubsistence consumptive uses of marine mammals. This discussion must explain how the State's program satisfies the requirements of section 109(f) of the Act, namely that the regulation of nonsubsistence consumptive uses of marine mammals provides, to the maximum extent practicable, economic opportunities for the residents of rural coastal villages of Alaska who engage in subsistence uses of the species.

(e) To assist states in preparing the state management program for submission, the Service will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Services. Notwithstanding preliminary review by the Service, once any proposed aspect of the state management program has been prepared and submitted in final form, it shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f)(1) After receiving the state's request, for management authority, the Service shall make an initial determination on whether the state's management program meets the requirements of the Act and these regulations.

(2) Within 45 days after receiving the state's request, unless the state and the Service agree to another time period, the Service shall publish a general notice of its initial determination in the FEDERAL REGISTER together with, in the case of a positive determination, the text of a proposed rule to transfer management authority to the state. The general notice shall contain a summary of the major components of the state's management program and shall indicate where the full text of the

management program may be inspected or copied. The public shall be allowed to submit written comments and to request an informal public hearing on the Service's initial determination and the state's management program within 60 days of publication of the general notice.

(g) If requested, the Service may conduct an informal public hearing after publishing 30 days' advance notice of the date, location, and time of such hearing in the FEDERAL REGISTER.

(h) After considering all comments and other relevant information, the Service shall publish in the FEDERAL REGISTER its final determination on whether the state has developed and will implement a management program that meets the requirement of the Act and these regulations. In the case of a positive final determination, the Service shall publish with the notice a final regulation transferring management authority for the species to the state after the following requirements are satisfied:

(1) The state's determinations pursuant to § 403.04 of this part are final and implemented under state law;

(2) Any cooperative allocation agreement required under § 403.05(a) of this part is implemented; and

(3) The state has enacted and submitted to the Service laws and policies that are substantially the same as those provided pursuant to § 403.03(a) in proposed form in the state's management program.

**§ 403.04 Determinations and hearings under section 109(c) of the MMPA.**

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with section 109(c) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from populations it manages without reducing the species below OSP. The state process must be completed before the state may exercise any management authority over the subject marine mammals, and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is ap-

plicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determination by the State.* The state agency with responsibility for managing the species in the event management authority is transferred to the state shall make initial determinations on the basis of the best scientific evidence available of:

(1) Whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The state agency shall provide notice of its initial determinations to the Service and the public and shall provide access to or copies of the documentation supporting its determinations to the Service and the public. The state agency shall indicate, in the notice of its initial determinations, the location(s) and hours during which such documentation may be inspected, and the costs, if any of copies of such documentation. The state agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations, and the state

shall provide a reasonable time, not less than 30 days, for making the request, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Service and the public not less than 30 days in advance of the scheduled date(s) of the hearing(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may

participate in the hearing by presenting oral or written testimony or cross-examining the witnesses or other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The state agency shall provide for either:

(i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the state agency; or

(ii) Review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency must be made solely on the basis of the record developed at the hearing. The state agency in making its final determinations, and/or presiding officer(s) in making his (their) recommended determinations, may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

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(2) The state agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Service and the public of its final determinations and shall provide access to or copies of its decision document and Hearing Record.

(h) *Judicial review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).

#### **§ 403.05 State and Federal responsibilities after transfer of management authority.**

(a) After determinations required by section 403.04 of this part have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative allocation agreement with the Secretary has been signed and the Service has transferred management authority pursuant to § 403.03(h). The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 403.04 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Service to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Service shall adopt and enforce within such zone, such of the

state's regulatory provisions as the Service considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been transferred to a state pursuant to this subpart, the Service shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species:

(1) The state shall so inform the Service, together with the reasons for such finding, within 30 days of its receipt of the application, and the Service shall not issue the permit; and

(2) The Service shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been transferred to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

#### **§ 403.06 Monitoring and review of State management program.**

(a) The Service has responsibility to monitor and review implementation of all state management programs approved pursuant to this part.

(b) In order to facilitate such review, each state to which management authority has been transferred shall submit an annual report, not later than 120 days after the close of such state's first full fiscal or calendar year following the effective date of the Service's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the state laws which comprise those aspects of the state management program submitted pursuant to § 403.03(b), and, in the case of Alaska, § 403.03(d), of this part;

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(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of budget and staffing levels for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Service may request, consistent with the Act as amended, or which the state deems necessary or advisable to facilitate review by the Service of state management of the species.

(c) Each state having an approved management program shall file a report, in a timely manner, not to exceed 45 days from the occurrence of any of the following:

(1) Any change in a relevant state law (amendments, repealers, or new legislation or regulations or judicial precedent) as submitted pursuant to paragraphs (b)(2) through (b)(5), and in the case of Alaska, paragraph (d), of § 403.03 of this part that may impair the State's ability to implement the program;

(2) Any significant natural or man-made occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 403.04 of this part.

(d) All components of the state request for transfer of management authority, as well as annual reports submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of the Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, or, as appropriate, at the Office of Protected

Species and Habitat Conservation, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, and at the appropriate Service's regional office.

### § 403.07 Revocation and return of State management authority.

(a) *Revocation of management.* The Service shall have responsibility to review management of a species transferred to a state under this part and to determine whether or not the implementation of the state management program continues to comply with the requirements of the Act, this part and the state's approved management program.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this part, or the state's approved management program, the Service shall, as soon as practicable but not later than 30 days after receipt, determine whether or not the state continues to comply with the requirements of the Act, this part and the state's approved management program.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Service determines that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this part or the state's approved management program, it shall provide written notice to the state of its intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Service shall publish notice of such intent to revoke in the FEDERAL REGISTER and invite public comment thereon, and shall conduct an informal public hearing on the matter if requested by the state or if the Service otherwise determines it to be necessary. The Service shall provide to the state an opportunity for consultation between the Service and the state concerning such actions or failures and necessary remedial actions to be taken by the state.



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(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Service, to bring the state management program into compliance with the provision of the Act, this part and the state's approved management program, the Service shall revoke the transfer of management authority by written notice to the state and publication in the FEDERAL REGISTER.

(b) *Voluntary return of management authority to the Service.* (1) If a state desires to return management of a species of marine mammals to the Service, it shall provide the Service notice of intent to return management. The Service shall accept the return of management, and such return shall become effective, upon publication of a notice in the FEDERAL REGISTER to this effect no sooner than 30 days (except in an emergency as determined by the Service) nor longer than 60 days after the state has provided notice of its intent to return management or unless otherwise agreed upon.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Service of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation and management of the species under the terms of the state management program, it shall so notify the Service and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation and management of marine mammals under the terms of the state management program, it shall so notify the Service together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 403.06(c)(1) of this part. In either case, the state shall provide notice to the Service as soon as practicable but not more than 30 days after issuance of the injunction. Management authority returned to the Service pursuant to this paragraph may be re-transferred to the

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state, notwithstanding the requirements of § 403.03, when, in the judgment of the Service, the cause for return of management authority to the Service has been alleviated in such a way as to allow effective conservation and management of the species consistent with the requirements of the Act and this part.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Service shall resume such management authority and provide for the conservation of the species within the state in accordance with the provisions of the Act.

#### § 403.08 List of States to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed and, where appropriate, cooperative allocation agreements pursuant to § 403.05(c) are in force: [Reserved]

### PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

#### Sec.

- 404.1 Scope and purpose.
- 404.2 Boundary.
- 404.3 Definitions.
- 404.4 Access to the Monument.
- 404.5 Requirements for a vessel monitoring system.
- 404.6 Prohibited activities.
- 404.7 Regulated activities.
- 404.8 Emergencies and law enforcement activities.
- 404.9 Armed Forces actions.
- 404.10 Commercial fishing.
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- 404.12 International law.

APPENDIX A TO PART 404—MAP OF THE MONUMENT OUTER BOUNDARY AND ECOLOGICAL RESERVES, SPECIAL PRESERVATION AREAS, AND MIDWAY ATOLL SPECIAL MANAGEMENT AREA

APPENDIX B TO PART 404—APPROVED VESSEL MONITORING SYSTEMS

APPENDIX C TO PART 404—BOUNDARY COORDINATED FOR PAPA HĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT AREAS TO BE AVOIDED

APPENDIX D TO PART 404—BOUNDARY COORDINATES FOR PAPA HĀNAUMOKUĀKEA MARINE

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NATIONAL MONUMENT SHIP REPORTING AREA  
APPENDIX E TO PART 404—CONTENT AND SYNTAX FOR PAPAĦANAUMOKUĀKEA SHIP REPORTING SYSTEM

AUTHORITY: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k-3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f, 16 U.S.C. 742l, and 16 U.S.C. 668dd-ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*, Pub. L. No. 106-513, §6(g) (2000).

SOURCE: 71 FR 51135, Aug. 29, 2006, unless otherwise noted.

### § 404.1 Scope and purpose.

The regulations in this part codify the provisions of Presidential Proclamation 8031, and govern the administration of the Northwestern Hawaiian Islands Marine National Monument. These regulations are jointly implemented by the Secretaries of the Interior, through the U.S. Fish and Wildlife Service (USFWS), and Commerce, through the National Oceanic and Atmospheric Administration (NOAA). Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

### § 404.2 Boundary.

The Northwestern Hawaiian Islands Marine National Monument consists of all lands and interest in lands owned or controlled by the Government of the United States within the boundaries of the Monument, including emergent and submerged lands and waters of the Northwestern Hawaiian Islands. The map in Appendix A to this part 404 depicts the outer boundary of the Monument, which consists of the geodetic lines connecting the coordinates specified in the Proclamation.

### § 404.3 Definitions.

The following definitions are applicable only to this Part.

*Areas to be avoided* means the four designated areas that should be avoided by vessels that are conducting passage through the Monument without interruption. Appendix C sets forth the coordinates of these areas.

*Attract or Attracting* means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

*Bottomfish Species* means Bottomfish management unit species as defined at 50 CFR 665.12.

*Categories of hazardous cargoes* means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the Code for the Safe Carriage of the Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships (INF Code).

*Commercial Bottomfishing* means commercial fishing for bottomfish species.

*Commercial passenger vessel* means a vessel that carries individuals who have paid for such carriage.

*Commercial pelagic trolling* means commercial fishing for pelagic species.

*Deserting* a vessel means:

(1) Leaving a vessel aground or adrift:

(i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;

(ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or

(iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessel's condition being reported to authorities.

(2) Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

*Ecological Reserve* means the areas of the Monument, identified in the Proclamation, consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and

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also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Monument. Specific coordinates for Ecological Reserves within the Monument are found in the Proclamation, and the Ecological Reserves consist of the areas within the geodetic lines connecting these coordinates. The Ecological Reserves are depicted on the map in Appendix A to part 404.

*Ecological integrity* means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

*Fishing year* means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

*IMO* means the International Maritime Organization.

*Introduced Species* means:

(1) A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Monument; or

(2) Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

*Landing* means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

*Midway Atoll Special Management Area* means the area of the Monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of Monument wildlife and historical resources. The geographic coordinates of this area, which consists of the area within the geodetic lines connecting these coordinates, are found in the Proclamation. The Midway Atoll Special Management Area is depicted on the map in Appendix A to part 404.

*Mobile transceiver unit* means a vessel monitoring system or VMS device, as described in Appendix E to this Part, installed on board a vessel that is used for vessel monitoring and transmitting

the vessel's position as required by this Part.

*Monument* means the Northwestern Hawaiian Islands Marine National Monument.

*Native Hawaiian Practices* means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the Monument.

*Ocean-based ecotourism* means a class of fee-for-service activities that involves visiting the Monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

*Office for Law Enforcement (OLE)* refers to NOAA, National Marine Fisheries Service, Office for Law Enforcement.

*Pelagic Species* means Pacific Pelagic Management Unit Species as defined at 50 CFR 665.12.

*Pono* means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

*Proclamation* means Presidential Proclamation 8031, dated June 15, 2006 (71 FR 36443).

*Recreational activity* means an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

*Reporting area* means the area within the coordinates set forth in Appendix D.

*Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their designees.

*Special Preservation Area (SPA)* means discrete, biologically important areas of the Monument, identified in the Proclamation, within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could

result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Specific coordinates for Special Preservation Areas within the Monument are found in the Proclamation, and the Special Preservation Areas consist of the areas within the geodetic lines connecting these coordinates. The Special Preservation Areas are depicted on the map in Appendix A to part 404.

*Special ocean use* means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

*Stowed and not available for immediate use* means not readily accessible for immediate use, *e.g.*, by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

*Sustenance fishing* means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.

*Vessel monitoring system or VMS* means a vessel monitoring system or mobile transceiver unit as described in § 404.5 and approved by Office for Law Enforcement for use on vessels permitted to access the Monument, as required by this Part.

[71 FR 51135, Aug. 29, 2006, as amended at 73 FR 73598, Dec. 3, 2008]

#### § 404.4 Access to Monument.

(a) Entering the Monument is prohibited and thus unlawful except:

- (1) As provided in §§ 404.8 and 404.9;
- (2) Pursuant to a permit issued under §§ 404.10 or 404.11; or

(3) When conducting passage without interruption in accordance with paragraphs (b) through (f) of this section.

(b) Any person passing through the Monument without interruption is subject to the prohibitions in §§ 404.5, 404.6, and 404.7.

(c) The following vessels, except vessels entitled to sovereign immunity under international law, passing through the Monument without interruption must participate in the ship reporting system as provided in paragraphs (d) and (e) of this section:

(1) Vessels of the United States, except as provided in paragraph (f) of this section;

(2) All other ships 300 gross tonnage or greater, entering or departing a United States port or place; and

(3) All other ships in the event of an emergency, entering or departing a United States port or place.

(d) Immediately upon entering the reporting area, the vessels described in paragraph (c) of this section must provide the following information by e-mail sent to [nwhi.notifications@noaa.gov](mailto:nwhi.notifications@noaa.gov) in the IMO standard reporting format and data syntax shown in Appendix E:

(1) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable.

(2) Date, time (UTC) and month of entry.

(3) Position.

(4) True course.

(5) Speed in knots and tenths.

(6) Destination and estimated time of arrival.

(7) Intended route through the Monument and the reporting area.

(8) Vessel draft (in meters).

(9) Categories of hazardous cargoes on board.

(10) Any vessel defects or deficiencies that restrict maneuverability or impair normal navigation.

(11) Any pollution incident or goods lost overboard within the Monument, the reporting area, or the U.S. EEZ.

(12) Contact information for the vessel's agent or owner.

(13) Vessel size (length overall, gross tonnage) and type.

#### § 404.5

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(14) Total number of persons on board.

(e) Immediately upon leaving the reporting area, the vessels described in paragraph (c) must provide the following information by e-mail sent to *nwhi.notifications@noaa.gov* in the IMO standard reporting format and data syntax shown in Appendix E:

(1) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable.

(2) Date, time (UTC) and month of exit.

(3) Position.

(4) Any pollution incident or goods lost overboard within the Monument, the reporting area, or the U.S. EEZ.

(f)(1) Vessels of the United States less than 300 gross tonnage that are not equipped with onboard e-mail capability must provide notification of entry and the information described in paragraphs (d)(1), (2), (3) as applicable, (6), (7), (8), (9) as applicable, (10), (12), (13), and (14) of this section at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the Monument and the information described in paragraph (e) of this section must be provided within 12 hours of leaving. Notification under this paragraph may be made by e-mail, telephone, or fax, by contacting: (i) *E-mail: nwhi.notifications@noaa.gov*;

(ii) *Telephone: 1-866-478-NWHI (6944)*;

(iii) *Fax: 1-808-397-2662*.

(2) The information must be provided in the IMO standard reporting format and data syntax shown in Appendix E.

(g) All vessels passing through the Monument without interruption other than those described in paragraphs (c)(1) through (3) of this section should participate in the ship reporting system set forth in paragraphs (d) and (e) of this section.

[73 FR 73598, Dec. 3, 2008]

#### § 404.5 Requirements for a vessel monitoring system.

(a) *Requirement for use.* Effective August 28, 2006, an owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such vessel has an OLE-approved, operating VMS on board when

voyaging within the Monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. Appendix B to this part 404 provides information regarding OLE-approved transmitting units.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized access to the Monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

(f) *Authority for installation and operation.* OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE.

(g) *Activities Regarding Vessel Monitoring Systems.* Effective August 28, 2006, the following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the Monument without an OLE type-approved mobile transceiver unit described in this section;

(2) Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

(3) Failing to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this section;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this section;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this section;

(6) Registering a VMS or mobile transceiver unit to more than one vessel at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

#### § 404.6 Prohibited activities.

The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(a) Exploring for, developing, or producing oil, gas, or minerals within the Monument;

(b) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument resource;

(c) Introducing or otherwise releasing an introduced species from within or into the Monument; and

(d) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

#### § 404.7 Regulated activities.

Except as provided in §§ 404.8, 404.9 and 404.10, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the Monument without a valid permit as provided for in § 404.11:

(a) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource;

(b) Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(c) Anchoring a vessel;

(d) Deserting a vessel aground, at anchor, or adrift;

(e) Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

(f) Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

(g) Touching coral, living or dead;

(h) Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument;

#### § 404.8

(i) Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

(j) Attracting any living Monument resource.

#### § 404.8 Emergencies and law enforcement activities.

The prohibitions in this part do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

#### § 404.9 Armed Forces actions.

(a) The prohibitions in this part do not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

(b) These regulations shall not limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(c) All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on Monument resources and qualities.

(d) In the event of threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Monument resource or quality.

#### § 404.10 Commercial fishing.

(a) *Lobster fishing.* Any commercial lobster fishing permit is subject to a zero annual harvest limit condition.

(b) *Fishing and bottomfish and pelagic species.* (1) Notwithstanding the prohibitions in § 404.7(a) and (h), commercial fishing for bottomfish and associated

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pelagic species may continue within the Monument subject to paragraph (c) of this section, until June 15, 2011, provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, subpart E as necessary.

(2) Total landings for each fishing year from fishing allowed under paragraph (b)(1) of this section may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

(3) Commercial fishing for bottomfish and associated pelagic species is prohibited in the Monument after June 15, 2011.

(c) *General requirements.* Any commercial fishing within the Monument shall be conducted in accordance with the following restrictions and conditions:

(1) A valid permit or facsimile of a valid permit shall be on board the fishing vessel and available for inspection by an authorized officer;

(2) No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report.

(3) Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

(4) Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the Monument and within 12 hours after leaving the Monument in accordance with § 404.4(b) and (c);

(5) All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument;

(6) All fishing vessels must carry an observer when requested to do so by the Secretaries;

(7) The activity does not take place within any Ecological Reserve, any

Special Preservation Area, or the Midway Atoll Special Management Area.

**§ 404.11 Permitting procedures and criteria.**

(a) *Issuance.* Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity prohibited by § 404.7 if such activity is specifically authorized by a permit issued under this section.

(b) *Application requirements.* Applicants for permits under this section shall submit applications to: Northwestern Hawaiian Islands Marine National Monument, 6600 Kalanianaʻole Highway, Suite 300, Honolulu, HI 96825.

(c) *Permit Types.* A permit under this subpart may be issued if the Secretaries find that the activity:

(1) Is research designed to further understanding of Monument resources and qualities;

(2) Will further the educational value of the Monument;

(3) Will assist in the conservation and management of the Monument;

(4) Will allow Native Hawaiian practices subject to paragraph (e) of this section;

(5) Will allow a special ocean use subject to paragraph (f) of this section; or

(6) Will allow recreational activities subject to paragraph (g) of this section.

(d) *Findings.* A permit may not be issued under this section unless the Secretaries find:

(1) The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;

(2) The activity will be conducted in a manner compatible with the purposes of the Proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(3) There is no practicable alternative to conducting the activity within the Monument;

(4) The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;

(5) The duration of the activity is no longer than necessary to achieve its stated purpose;

(6) The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(7) The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(8) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;

(9) The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of § 404.5; and

(10) There are no other factors that would make the issuance of a permit for the activity inappropriate.

(e) *Additional findings for Native Hawaiian practice permits.* In addition to the findings listed in paragraph (d) of this section, a permit to allow Native Hawaiian practices under paragraph (c)(4) of this section, may not be issued unless:

(1) The activity is non-commercial and will not involve the sale of any organism or material collected;

(2) The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (*pono*), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;

(3) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

(4) The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

(5) Any Monument resource harvested from the Monument will be consumed in the Monument.

(f) *Additional findings, criteria, and requirements for special ocean use permits.*

(1) In addition to the findings listed in



paragraph (d) of this section, the following requirements apply to the issuance of a permit for a special ocean use under paragraph (c)(5) of this section:

(i) Any permit for a special ocean use issued under this section:

(A) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Monument is designated and with protection of Monument resources;

(B) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed;

(C) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources; and

(D) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims;

(ii) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(2) In addition to the findings listed in paragraph (d) of this section, a permit may not be issued for a special ocean use unless the activity has been determined to be consistent with the findings made pursuant to paragraph (f) of this section.

(3) Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special ocean use may only be issued if a special ocean use pilot project for that category meets the requirements of this section, and any terms and conditions placed on the permit for the pilot project.

(4) Public notice shall be provided prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

(5) The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) A permit for a special ocean use for activities within the Midway Atoll Special Management Area may be issued provided:

(A) The activity furthers the conservation and management of the Monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit issued pursuant to this paragraph (f)(5), vessels may be allowed to transit the Monument as necessary to enter the Midway Atoll Special Management Area.

(6) A permit for a special ocean use for activities outside the Midway Atoll Special Management Area may be issued provided:

(i) The activity will directly benefit the conservation and management of the Monument;

(ii) The purpose of the activity is for research or education related to the resources or qualities of the Monument;

(iii) Public notice of the application and an opportunity to provide comments is given at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

(g) *Additional findings for recreation permits.* A permit for recreational activities under paragraph (c)(6) of this section may be issued for activities to be conducted within the Midway Atoll Special Management area if, in addition to the findings listed in paragraph (d) of this section:

(1) The activity is for the purpose of recreation as defined in section 404.3;

(2) The activity is not associated with any for-hire operation; and

(3) The activity does not involve any extractive use.

(h) *Sustenance fishing.* Sustenance fishing, as defined in 404.3, may be allowed outside of any Special Preservation Area as a term or condition of any

permit issued under this part. Sustenance fishing in the Midway Atoll Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with the Proclamation and this part, including considering the extent to which the conduct of the activity may diminish Monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. Sustenance fishing is subject to

systematic reporting requirements when developed by the Secretaries.

[71 FR 51135, Aug. 29, 2006, as amended at 72 FR 5643, Feb. 7, 2007]

**§ 404.12 International law.**

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

APPENDIX A TO PART 404—MAP OF THE MONUMENT OUTER BOUNDARY AND ECOLOGICAL RESERVES, SPECIAL PRESERVATION AREAS, AND MIDWAY ATOLL SPECIAL MANAGEMENT AREA



APPENDIX B TO PART 404—APPROVED  
VMS

## I. VMS MOBILE TRANSCEIVER UNIT

*Thrane & Thrane Sailor 3026D Gold VMS*

The Thrane & Thrane Sailor 3026D Gold VMS (TT-3026D) has been found to meet the minimum technical requirements for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The address for the Thrane & Thrane distributor contact is provided in this notice under the heading VMS Provider Address.

The TT-3026D Gold VMS features an integrated GPS/Inmarsat-C unit and a marine grade monitor with keyboard and integrated mouse. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by Thrane & Thrane personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The TT-3026D provides operation down to  $\pm 15$  degree angles. The unit has the capability of two-way communications to send formatted forms and to receive e-mail and other messages. A configuration option is available to automatically send position reports to a private address, such as a fleet management company.

A vessel owner may purchase this system by contacting the entity identified in this notice under the heading "VMS Provider Address." The owner should identify himself or herself as a vessel owner issued a permit to operate in the Northwestern Hawaiian Islands Marine National Monument, so the transceiver set can be properly configured. To use the TT-3026D the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C "Registration for Service Activation for Maritime Mobile Earth Station." The owner should consult with Thrane & Thrane when completing this form.

Thrane & Thrane personnel will perform the following services before shipment: (1) Configure the transceiver according to OLE specifications for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument; (2) download the predetermined NMFS position

reporting and broadcast command identification numbers into the unit; (3) test the unit to ensure operation when installation has been completed on the vessel; and (4) forward the Inmarsat service provider and the transceiver identifying information to OLE.

## II. INMARSAT-C COMMUNICATIONS PROVIDERS

It is recommended, for vendor warranty and customer service purposes, that the vessel owner keep for his or her records and that Telenor and Xantic have on record the following identifying information: (1) Signed and dated receipts and contracts; (2) transceiver serial number; (3) Telenor or Xantic customer number, user name and password; (4) e-mail address of transceiver; (5) Inmarsat identification number; (6) owner name; (7) vessel name; (8) vessel documentation or registration number; and (9) mobile earth station license (FCC license).

The OLE will provide an installation and activation checklist that the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by an experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm the TT-3026D operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a trip under VMS. The OLE does not regard the vessel as meeting requirements until position reports are automatically received. For confirmation purposes, contact the NOAA Fisheries Office for Law Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, MD 20910, phone 888-219-9228, fax 301-427-0049.

*Telenor Satellite Services*

Inmarsat-C is a store-and-forward data messaging service. Inmarsat-C allows users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. Inmarsat-C supports a wide variety of applications including Internet, e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use Inmarsat-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. Telenor Vessel Monitoring System Services is being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Telenor addresses, look inside this notice under the heading "VMS Provider Address"

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*Xantic*

Xantic is a provider of Vessel Monitoring Services to the maritime industry. By installing an approved OLE Inmarsat-C transceiver on the vessel, vessels can send and receive e-mail, to and from land, while the transceiver automatically sends vessel position reports to OLE, and is fully compliant with the International Coast Guard Search and Rescue Centers. Xantic Vessel Monitoring System Services are being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Xantic addresses, look in this notice under the heading "VMS Provider Address"

For Telenor and Xantic, Thrane & Thrane customer service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. (OLE requires VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

Thrane & Thrane provides customer service for Telenor and Xantic users to support and establish two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports OLE's message needs and, optionally, the crew's private message needs.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company.

Vessel owners wishing to use Telenor or Xantic services will need to purchase an Inmarsat-C transceiver approved for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The owner will need to complete an Inmarsat-C system use contract with Telenor or Xantic, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Telenor or Xantic's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

III. VMS PROVIDER ADDRESS

For TT-3026D, Telenor, or Xantic information, contact Ronald Lockerby, Marine Products, Thrane & Thrane, Inc., 509 Viking Drive, Suite K, L & M, Virginia Beach, VA 23452; voice: 757-463-9557; fax: 757-463-9581, e-mail: [rdl@tt.dk.com](mailto:rdl@tt.dk.com); Web site: <http://www.landseasystems.com>.

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APPENDIX C TO PART 404—BOUNDARY  
COORDINATED FOR  
PAPAHĀNAUMOKUĀKEA MARINE NA-  
TIONAL MONUMENT AREAS TO BE  
AVOIDED

APPENDIX C—GEOGRAPHICAL COORDINATES

*Areas To Be Avoided*

*Papahānaumokuākea Marine National  
Monument*

Reference chart: United States 540, 2008 edition; 19016, 2008 edition; 19019, 2008 edition; 19022, 2008 edition.

These charts are based on World Geodetic System 1984 Datum (WGS-84) and astronomic datum.

TABLE C-1—KURE ATOLL, MIDWAY ATOLL, AND  
PEARL AND HERMES ATOLL

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 27°14'.76    | 176°29'.87    |
| 2 .....  | 27°24'.95    | 177°33'.31    |
| 3 .....  | 27°35'.87    | 178°29'.90    |
| 4 .....  | 27°36'.64    | 178°33'.93    |
| 5 .....  | 27°37'.53    | 178°37'.32    |
| 6 .....  | 27°38'.60    | 178°40'.65    |
| 7 .....  | 27°39'.85    | 178°43'.90    |
| 8 .....  | 27°41'.28    | 178°47'.05    |
| 9 .....  | 27°42'.89    | 178°50'.10    |
| 10 ..... | 27°44'.66    | 178°53'.03    |
| 11 ..... | 27°46'.59    | 178°55'.83    |
| 12 ..... | 27°48'.67    | 178°58'.49    |
| 13 ..... | 27°50'.89    | 179°01'.00    |
| 14 ..... | 27°53'.22    | 179°03'.39    |
| 15 ..... | 27°55'.69    | 179°05'.61    |
| 16 ..... | 27°58'.29    | 179°07'.61    |
| 17 ..... | 28°01'.01    | 179°09'.47    |
| 18 ..... | 28°03'.81    | 179°11'.10    |
| 19 ..... | 28°06'.71    | 179°12'.53    |
| 20 ..... | 28°09'.67    | 179°13'.75    |
| 21 ..... | 28°12'.70    | 179°14'.75    |
| 22 ..... | 28°15'.78    | 179°15'.54    |
| 23 ..... | 28°18'.91    | 179°16'.11    |
| 24 ..... | 28°22'.04    | 179°16'.45    |
| 25 ..... | 28°24'.72    | 179°16'.56    |
| 26 ..... | 28°25'.20    | 179°16'.57    |
| 27 ..... | 28°25'.81    | 179°16'.56    |
| 28 ..... | 28°28'.35    | 179°16'.44    |
| 29 ..... | 28°31'.49    | 179°16'.10    |
| 30 ..... | 28°34'.61    | 179°15'.54    |
| 31 ..... | 28°37'.69    | 179°14'.75    |
| 32 ..... | 28°40'.71    | 179°13'.74    |
| 33 ..... | 28°43'.68    | 179°12'.54    |
| 34 ..... | 28°46'.58    | 179°11'.13    |
| 35 ..... | 28°49'.39    | 179°09'.52    |
| 36 ..... | 28°52'.11    | 179°07'.70    |
| 37 ..... | 28°54'.72    | 179°05'.70    |
| 38 ..... | 28°57'.21    | 179°03'.51    |
| 39 ..... | 28°59'.58    | 179°01'.15    |
| 40 ..... | 29°01'.81    | 178°58'.62    |
| 41 ..... | 29°03'.90    | 178°55'.93    |
| 42 ..... | 29°05'.83    | 178°53'.10    |
| 43 ..... | 29°07'.60    | 178°50'.13    |
| 44 ..... | 29°09'.21    | 178°47'.04    |
| 45 ..... | 29°10'.64    | 178°43'.84    |
| 46 ..... | 29°11'.89    | 178°40'.54    |
| 47 ..... | 29°12'.95    | 178°37'.16    |
| 48 ..... | 29°13'.82    | 178°33'.71    |
| 49 ..... | 29°14'.50    | 178°30'.21    |

## FWS, DOI, and NOAA, Commerce

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TABLE C—1—KURE ATOLL, MIDWAY ATOLL, AND PEARL AND HERMES ATOLL—Continued

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 50 ..... | 29°14'.99    | 178°26'.66    |
| 51 ..... | 29°15'.28    | 178°23'.08    |
| 52 ..... | 29°15'.36    | 178°19'.49    |
| 53 ..... | 29°15'.25    | 178°15'.90    |
| 54 ..... | 29°14'.94    | 178°12'.32    |
| 55 ..... | 29°14'.43    | 178°08'.78    |
| 56 ..... | 29°03'.47    | 177°12'.07    |
| 57 ..... | 29°02'.55    | 177°07'.29    |
| 58 ..... | 28°38'.96    | 175°35'.47    |
| 59 ..... | 28°38'.67    | 175°34'.35    |
| 60 ..... | 28°34'.91    | 175°19'.74    |
| 61 ..... | 28°26'.24    | 175°10'.65    |
| 62 ..... | 28°24'.61    | 175°08'.95    |
| 63 ..... | 28°24'.53    | 175°09'.04    |
| 64 ..... | 28°20'.09    | 175°04'.91    |
| 65 ..... | 28°16'.05    | 175°01'.92    |
| 66 ..... | 28°11'.78    | 174°59'.33    |
| 67 ..... | 28°07'.29    | 174°57'.23    |
| 68 ..... | 28°02'.63    | 174°55'.68    |
| 69 ..... | 27°57'.84    | 174°54'.62    |
| 70 ..... | 27°53'.01    | 174°54'.05    |
| 71 ..... | 27°48'.12    | 174°54'.05    |
| 72 ..... | 27°43'.28    | 174°54'.62    |
| 73 ..... | 27°38'.48    | 174°55'.71    |
| 74 ..... | 27°33'.81    | 174°57'.32    |
| 75 ..... | 27°29'.30    | 174°59'.43    |
| 76 ..... | 27°25'.00    | 175°02'.03    |
| 77 ..... | 27°20'.93    | 175°05'.07    |
| 78 ..... | 27°17'.18    | 175°08'.59    |
| 79 ..... | 27°13'.73    | 175°12'.47    |
| 80 ..... | 27°10'.59    | 175°16'.67    |
| 81 ..... | 27°07'.88    | 175°21'.25    |
| 82 ..... | 27°05'.57    | 175°26'.09    |
| 83 ..... | 27°03'.66    | 175°31'.15    |
| 84 ..... | 27°02'.22    | 175°36'.40    |
| 85 ..... | 27°01'.29    | 175°41'.78    |
| 86 ..... | 27°00'.73    | 175°47'.22    |
| 87 ..... | 27°00'.68    | 175°52'.74    |
| 88 ..... | 27°01'.09    | 175°58'.16    |
| 89 ..... | 27°01'.99    | 176°03'.53    |
| 90 ..... | 27°03'.34    | 176°08'.81    |
| 91 ..... | 27°05'.12    | 176°13'.91    |
| 92 ..... | 27°07'.37    | 176°18'.79    |
| 93 ..... | 27°09'.98    | 176°23'.40    |
| 94 ..... | 27°13'.02    | 176°27'.74    |
| 95 ..... | 27°13'.77    | 176°28'.70    |

TABLE C—2—LISIANSKI ISLAND, LAYSAN ISLAND, MARO REEF, AND RAITA BANK

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 26°50'.89    | 173°30'.79    |
| 2 .....  | 26°36'.00    | 171°37'.70    |
| 3 .....  | 26°35'.49    | 171°33'.84    |
| 4 .....  | 26°35'.10    | 171°30'.84    |
| 5 .....  | 26°34'.07    | 171°27'.50    |
| 6 .....  | 26°33'.35    | 171°25'.16    |
| 7 .....  | 26°14'.26    | 170°23'.04    |
| 8 .....  | 26°08'.69    | 169°48'.96    |
| 9 .....  | 26°08'.36    | 169°49'.03    |
| 10 ..... | 26°07'.62    | 169°45'.83    |
| 11 ..... | 26°06'.03    | 169°40'.57    |
| 12 ..... | 26°03'.97    | 169°35'.64    |
| 13 ..... | 26°01'.51    | 169°30'.91    |
| 14 ..... | 25°58'.65    | 169°26'.45    |
| 15 ..... | 25°55'.32    | 169°22'.34    |
| 16 ..... | 25°51'.67    | 169°18'.60    |
| 17 ..... | 25°47'.78    | 169°15'.19    |
| 18 ..... | 25°43'.54    | 169°12'.34    |

TABLE C—2—LISIANSKI ISLAND, LAYSAN ISLAND, MARO REEF, AND RAITA BANK—Continued

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 19 ..... | 25°39'.05    | 169°09'.93    |
| 20 ..... | 25°34'.37    | 169°08'.08    |
| 21 ..... | 25°29'.54    | 169°06'.76    |
| 22 ..... | 25°24'.61    | 169°05'.93    |
| 23 ..... | 25°19'.63    | 169°05'.64    |
| 24 ..... | 25°14'.65    | 169°05'.93    |
| 25 ..... | 25°09'.69    | 169°06'.66    |
| 26 ..... | 25°04'.85    | 169°08'.02    |
| 27 ..... | 25°00'.17    | 169°09'.96    |
| 28 ..... | 24°55'.66    | 169°12'.35    |
| 29 ..... | 24°51'.35    | 169°15'.14    |
| 30 ..... | 24°47'.37    | 169°18'.48    |
| 31 ..... | 24°43'.69    | 169°22'.22    |
| 32 ..... | 24°40'.34    | 169°26'.31    |
| 33 ..... | 24°37'.42    | 169°30'.78    |
| 34 ..... | 24°35'.00    | 169°35'.64    |
| 35 ..... | 24°33'.02    | 169°40'.66    |
| 36 ..... | 24°31'.34    | 169°45'.88    |
| 37 ..... | 24°30'.31    | 169°51'.08    |
| 38 ..... | 24°29'.68    | 169°56'.53    |
| 39 ..... | 24°29'.56    | 170°01'.81    |
| 40 ..... | 24°29'.61    | 170°04'.57    |
| 41 ..... | 24°35'.77    | 170°44'.39    |
| 42 ..... | 24°36'.29    | 170°47'.58    |
| 43 ..... | 24°37'.18    | 170°50'.37    |
| 44 ..... | 24°37'.76    | 170°52'.17    |
| 45 ..... | 24°56'.23    | 171°50'.19    |
| 46 ..... | 25°16'.61    | 174°24'.84    |
| 47 ..... | 25°29'.56    | 174°38'.45    |
| 48 ..... | 25°33'.28    | 174°42'.03    |
| 49 ..... | 25°37'.33    | 174°45'.20    |
| 50 ..... | 25°41'.68    | 174°47'.84    |
| 51 ..... | 25°46'.23    | 174°50'.05    |
| 52 ..... | 25°50'.93    | 174°51'.77    |
| 53 ..... | 25°55'.80    | 174°52'.91    |
| 54 ..... | 26°00'.71    | 174°53'.47    |
| 55 ..... | 26°05'.67    | 174°53'.61    |
| 56 ..... | 26°10'.59    | 174°53'.07    |
| 57 ..... | 26°15'.46    | 174°52'.08    |
| 58 ..... | 26°20'.20    | 174°50'.57    |
| 59 ..... | 26°24'.75    | 174°48'.44    |
| 60 ..... | 26°29'.15    | 174°45'.94    |
| 61 ..... | 26°33'.26    | 174°42'.96    |
| 62 ..... | 26°37'.11    | 174°39'.49    |
| 63 ..... | 26°40'.60    | 174°35'.63    |
| 64 ..... | 26°43'.75    | 174°31'.43    |
| 65 ..... | 26°46'.49    | 174°26'.87    |
| 66 ..... | 26°48'.90    | 174°22'.09    |
| 67 ..... | 26°50'.79    | 174°17'.03    |
| 68 ..... | 26°52'.20    | 174°11'.79    |
| 69 ..... | 26°53'.21    | 174°06'.43    |
| 70 ..... | 26°53'.74    | 174°00'.98    |
| 71 ..... | 26°53'.74    | 173°55'.48    |
| 72 ..... | 26°53'.29    | 173°50'.02    |
| 73 ..... | 26°52'.56    | 173°44'.58    |
| 74 ..... | 26°51'.85    | 173°39'.14    |
| 75 ..... | 26°51'.13    | 173°33'.69    |
| 76 ..... | 26°50'.75    | 173°30'.87    |

TABLE C—3—GARDNER PINNACLES, FRENCH FRIGATE SHOALS, AND NECKER ISLAND

| Point   | Latitude (N) | Longitude (W) |
|---------|--------------|---------------|
| 1 ..... | 25°49'.64    | 167°52'.66    |
| 2 ..... | 25°49'.70    | 167°52'.65    |
| 3 ..... | 25°48'.99    | 167°48'.35    |
| 4 ..... | 25°47'.09    | 167°36'.72    |
| 5 ..... | 25°39'.84    | 167°26'.48    |
| 6 ..... | 25°35'.10    | 167°19'.79    |

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**TABLE C-3—GARDNER PINNACLES, FRENCH FRIGATE SHOALS, AND NECKER ISLAND—Continued**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 7 .....  | 25°10'.43    | 166°45'.00    |
| 8 .....  | 24°40'.91    | 166°03'.36    |
| 9 .....  | 24°35'.64    | 165°34'.99    |
| 10 ..... | 24°23'.78    | 164°31'.12    |
| 11 ..... | 24°23'.59    | 164°31'.14    |
| 12 ..... | 24°23'.31    | 164°29'.74    |
| 13 ..... | 24°21'.85    | 164°24'.52    |
| 14 ..... | 24°20'.10    | 164°19'.39    |
| 15 ..... | 24°17'.75    | 164°14'.56    |
| 16 ..... | 24°14'.99    | 164°09'.97    |
| 17 ..... | 24°11'.86    | 164°05'.69    |
| 18 ..... | 24°08'.30    | 164°01'.80    |
| 19 ..... | 24°04'.48    | 163°58'.23    |
| 20 ..... | 24°00'.27    | 163°55'.22    |
| 21 ..... | 23°55'.85    | 163°52'.59    |
| 22 ..... | 23°51'.17    | 163°50'.56    |
| 23 ..... | 23°46'.33    | 163°48'.98    |
| 24 ..... | 23°41'.37    | 163°47'.99    |
| 25 ..... | 23°36'.34    | 163°47'.56    |
| 26 ..... | 23°31'.27    | 163°47'.60    |
| 27 ..... | 23°26'.27    | 163°48'.28    |
| 28 ..... | 23°21'.34    | 163°49'.50    |
| 29 ..... | 23°16'.53    | 163°51'.14    |
| 30 ..... | 23°11'.96    | 163°53'.47    |
| 31 ..... | 23°07'.54    | 163°56'.15    |
| 32 ..... | 23°03'.46    | 163°59'.38    |
| 33 ..... | 22°59'.65    | 164°03'.01    |
| 34 ..... | 22°56'.27    | 164°07'.10    |
| 35 ..... | 22°53'.22    | 164°11'.49    |
| 36 ..... | 22°50'.60    | 164°16'.18    |
| 37 ..... | 22°48'.48    | 164°21'.16    |
| 38 ..... | 22°46'.73    | 164°26'.28    |
| 39 ..... | 22°45'.49    | 164°31'.60    |
| 40 ..... | 22°44'.83    | 164°37'.03    |
| 41 ..... | 22°44'.65    | 164°42'.51    |
| 42 ..... | 22°44'.92    | 164°47'.99    |
| 43 ..... | 22°45'.11    | 164°49'.52    |
| 44 ..... | 22°45'.39    | 164°51'.48    |
| 45 ..... | 22°45'.17    | 164°51'.53    |
| 46 ..... | 22°50'.26    | 165°34'.99    |
| 47 ..... | 22°55'.50    | 166°19'.63    |
| 48 ..... | 22°55'.93    | 166°23'.32    |
| 49 ..... | 22°57'.41    | 166°36'.00    |
| 50 ..... | 23°03'.75    | 166°45'.00    |
| 51 ..... | 23°05'.48    | 166°47'.45    |
| 52 ..... | 24°12'.70    | 168°22'.86    |
| 53 ..... | 24°12'.88    | 168°22'.78    |
| 54 ..... | 24°16'.05    | 168°27'.28    |
| 55 ..... | 24°19'.15    | 168°31'.66    |
| 56 ..... | 24°22'.27    | 168°35'.95    |
| 57 ..... | 24°25'.71    | 168°39'.94    |
| 58 ..... | 24°29'.51    | 168°43'.55    |
| 59 ..... | 24°33'.67    | 168°46'.63    |
| 60 ..... | 24°38'.06    | 168°49'.29    |
| 61 ..... | 24°42'.68    | 168°51'.46    |
| 62 ..... | 24°47'.45    | 168°53'.12    |
| 63 ..... | 24°52'.34    | 168°54'.28    |
| 64 ..... | 24°57'.32    | 168°54'.82    |
| 65 ..... | 25°02'.32    | 168°54'.95    |
| 66 ..... | 25°07'.30    | 168°54'.43    |
| 67 ..... | 25°12'.19    | 168°53'.32    |
| 68 ..... | 25°16'.99    | 168°51'.76    |
| 69 ..... | 25°21'.57    | 168°49'.60    |
| 70 ..... | 25°25'.94    | 168°46'.93    |
| 71 ..... | 25°30'.09    | 168°43'.86    |
| 72 ..... | 25°33'.89    | 168°40'.42    |
| 73 ..... | 25°37'.37    | 168°36'.52    |
| 74 ..... | 25°40'.49    | 168°32'.24    |
| 75 ..... | 25°43'.24    | 168°27'.68    |
| 76 ..... | 25°45'.57    | 168°22'.82    |

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**TABLE C-3—GARDNER PINNACLES, FRENCH FRIGATE SHOALS, AND NECKER ISLAND—Continued**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 77 ..... | 25°47'.43    | 168°17'.76    |
| 78 ..... | 25°48'.79    | 168°12'.47    |
| 79 ..... | 25°49'.72    | 168°07'.09    |
| 80 ..... | 25°50'.11    | 168°01'.62    |
| 81 ..... | 25°50'.18    | 168°00'.09    |

**TABLE C-4—NIHOA ISLAND**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 23°52'.82    | 161°44'.54    |
| 2 .....  | 23°52'.10    | 161°41'.20    |
| 3 .....  | 23°51'.18    | 161°37'.92    |
| 4 .....  | 23°50'.08    | 161°34'.71    |
| 5 .....  | 23°48'.79    | 161°31'.58    |
| 6 .....  | 23°47'.33    | 161°28'.55    |
| 7 .....  | 23°45'.69    | 161°25'.62    |
| 8 .....  | 23°43'.88    | 161°22'.81    |
| 9 .....  | 23°41'.92    | 161°20'.13    |
| 10 ..... | 23°39'.80    | 161°17'.60    |
| 11 ..... | 23°37'.54    | 161°15'.21    |
| 12 ..... | 23°35'.14    | 161°12'.99    |
| 13 ..... | 23°32'.62    | 161°10'.93    |
| 14 ..... | 23°29'.99    | 161°09'.05    |
| 15 ..... | 23°27'.25    | 161°07'.35    |
| 16 ..... | 23°24'.42    | 161°05'.85    |
| 17 ..... | 23°21'.51    | 161°04'.54    |
| 18 ..... | 23°18'.52    | 161°03'.43    |
| 19 ..... | 23°15'.48    | 161°02'.53    |
| 20 ..... | 23°12'.39    | 161°01'.84    |
| 21 ..... | 23°09'.27    | 161°01'.35    |
| 22 ..... | 23°06'.13    | 161°01'.09    |
| 23 ..... | 23°02'.97    | 161°01'.03    |
| 24 ..... | 22°59'.82    | 161°01'.19    |
| 25 ..... | 22°56'.69    | 161°01'.57    |
| 26 ..... | 22°53'.58    | 161°02'.15    |
| 27 ..... | 22°50'.51    | 161°02'.95    |
| 28 ..... | 22°47'.50    | 161°03'.95    |
| 29 ..... | 22°44'.55    | 161°05'.15    |
| 30 ..... | 22°41'.67    | 161°06'.54    |
| 31 ..... | 22°38'.88    | 161°08'.13    |
| 32 ..... | 22°36'.19    | 161°09'.90    |
| 33 ..... | 22°33'.61    | 161°11'.85    |
| 34 ..... | 22°31'.14    | 161°13'.97    |
| 35 ..... | 22°28'.81    | 161°16'.25    |
| 36 ..... | 22°26'.61    | 161°18'.69    |
| 37 ..... | 22°24'.56    | 161°21'.26    |
| 38 ..... | 22°22'.66    | 161°23'.97    |
| 39 ..... | 22°20'.92    | 161°26'.80    |
| 40 ..... | 22°19'.35    | 161°29'.74    |
| 41 ..... | 22°17'.95    | 161°32'.78    |
| 42 ..... | 22°16'.73    | 161°35'.90    |
| 43 ..... | 22°15'.70    | 161°39'.10    |
| 44 ..... | 22°14'.85    | 161°42'.37    |
| 45 ..... | 22°14'.20    | 161°45'.68    |
| 46 ..... | 22°13'.73    | 161°49'.03    |
| 47 ..... | 22°13'.47    | 161°52'.41    |
| 48 ..... | 22°13'.40    | 161°55'.80    |
| 49 ..... | 22°13'.53    | 161°59'.18    |
| 50 ..... | 22°13'.85    | 162°02'.55    |
| 51 ..... | 22°14'.31    | 162°05'.45    |
| 52 ..... | 22°14'.37    | 162°05'.89    |
| 53 ..... | 22°14'.59    | 162°06'.88    |
| 54 ..... | 22°15'.87    | 162°12'.18    |
| 55 ..... | 22°17'.70    | 162°17'.31    |
| 56 ..... | 22°19'.97    | 162°22'.20    |
| 57 ..... | 22°22'.73    | 162°26'.84    |
| 58 ..... | 22°25'.88    | 162°31'.15    |
| 59 ..... | 22°29'.41    | 162°35'.09    |

TABLE C—4—NIHOA ISLAND—Continued

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 60 ..... | 22°33'.28    | 162°38'.61    |
| 61 ..... | 22°37'.47    | 162°41'.72    |
| 62 ..... | 22°41'.93    | 162°44'.34    |
| 63 ..... | 22°46'.63    | 162°46'.47    |
| 64 ..... | 22°51'.48    | 162°48'.05    |
| 65 ..... | 22°56'.46    | 162°49'.09    |
| 66 ..... | 23°01'.50    | 162°49'.58    |
| 67 ..... | 23°06'.58    | 162°49'.49    |
| 68 ..... | 23°11'.61    | 162°48'.89    |
| 69 ..... | 23°16'.57    | 162°47'.70    |
| 70 ..... | 23°21'.36    | 162°45'.98    |
| 71 ..... | 23°26'.02    | 162°43'.75    |
| 72 ..... | 23°30'.40    | 162°41'.01    |
| 73 ..... | 23°34'.51    | 162°37'.83    |
| 74 ..... | 23°38'.26    | 162°34'.18    |
| 75 ..... | 23°41'.69    | 162°30'.18    |
| 76 ..... | 23°44'.72    | 162°25'.79    |
| 77 ..... | 23°47'.36    | 162°21'.11    |
| 78 ..... | 23°49'.55    | 162°16'.16    |
| 79 ..... | 23°51'.24    | 162°10'.99    |
| 80 ..... | 23°52'.44    | 162°05'.63    |
| 81 ..... | 23°53'.14    | 162°00'.25    |
| 82 ..... | 23°53'.36    | 161°54'.75    |
| 83 ..... | 23°53'.09    | 161°49'.28    |
| 84 ..... | 23°52'.82    | 161°47'.09    |
| 85 ..... | 23°52'.39    | 161°44'.67    |

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APPENDIX D TO PART 404—BOUNDARY  
COORDINATES FOR  
PAPAHĀNAUMOKUĀKEA MARINE NA-  
TIONAL MONUMENT SHIP REPORTING  
AREA

## APPENDIX D—GEOGRAPHICAL COORDINATES

*Ship Reporting Area**Papahānaumokuākea Marine National  
Monument*

Reference chart: United States 540, 2008  
edition; 19016, 2008 edition; 19019, 2008 edition;  
19022, 2008 edition.

These charts are based on World Geodetic  
System 1984 Datum (WGS-84) and astronomic  
datum.

TABLE D—1—OUTER BOUNDARY

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 29°25'.47    | 178°16'.97    |
| 2 .....  | 28°43'.73    | 175°13'.84    |
| 3 .....  | 27°00'.77    | 173°25'.78    |
| 4 .....  | 26°44'.91    | 171°28'.07    |
| 5 .....  | 26°24'.23    | 170°20'.59    |
| 6 .....  | 25°56'.43    | 167°32'.10    |
| 7 .....  | 24°50'.20    | 165°58'.69    |
| 8 .....  | 24°05'.52    | 161°56'.86    |
| 9 .....  | 24°05'.29    | 161°56'.62    |
| 10 ..... | 24°04'.37    | 161°51'.53    |
| 11 ..... | 24°03'.44    | 161°46'.45    |
| 12 ..... | 24°02'.41    | 161°41'.39    |
| 13 ..... | 24°01'.31    | 161°36'.35    |
| 14 ..... | 23°59'.68    | 161°31'.55    |
| 15 ..... | 23°57'.85    | 161°26'.85    |
| 16 ..... | 23°55'.54    | 161°22'.31    |

TABLE D—1—OUTER BOUNDARY—Continued

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 17 ..... | 23°52'.96    | 161°17'.92    |
| 18 ..... | 23°50'.12    | 161°13'.72    |
| 19 ..... | 23°46'.94    | 161°10'.08    |
| 20 ..... | 23°43'.49    | 161°06'.47    |
| 21 ..... | 23°39'.71    | 161°03'.09    |
| 22 ..... | 23°35'.72    | 161°00'.14    |
| 23 ..... | 23°31'.59    | 160°57'.46    |
| 24 ..... | 23°27'.32    | 160°55'.23    |
| 25 ..... | 23°22'.74    | 160°53'.71    |
| 26 ..... | 23°18'.29    | 160°52'.17    |
| 27 ..... | 23°13'.57    | 160°51'.04    |
| 28 ..... | 23°08'.68    | 160°50'.46    |
| 29 ..... | 23°03'.70    | 160°50'.17    |
| 30 ..... | 22°58'.67    | 160°50'.35    |
| 31 ..... | 22°53'.84    | 160°51'.04    |
| 32 ..... | 22°49'.11    | 160°52'.20    |
| 33 ..... | 22°44'.46    | 160°53'.56    |
| 34 ..... | 22°40'.03    | 160°55'.52    |
| 35 ..... | 22°35'.73    | 160°57'.68    |
| 36 ..... | 22°31'.54    | 161°00'.25    |
| 37 ..... | 22°27'.57    | 161°03'.23    |
| 38 ..... | 22°23'.76    | 161°06'.64    |
| 39 ..... | 22°20'.24    | 161°10'.23    |
| 40 ..... | 22°17'.02    | 161°14'.13    |
| 41 ..... | 22°14'.04    | 161°18'.34    |
| 42 ..... | 22°11'.35    | 161°22'.80    |
| 43 ..... | 22°09'.19    | 161°27'.45    |
| 44 ..... | 22°07'.29    | 161°32'.11    |
| 45 ..... | 22°05'.87    | 161°36'.94    |
| 46 ..... | 22°04'.62    | 161°41'.89    |
| 47 ..... | 22°03'.94    | 161°47'.09    |
| 48 ..... | 22°03'.41    | 161°52'.36    |
| 49 ..... | 22°03'.41    | 161°57'.51    |
| 50 ..... | 22°03'.82    | 162°02'.83    |
| 51 ..... | 22°04'.49    | 162°08'.04    |
| 52 ..... | 22°05'.43    | 162°13'.12    |
| 53 ..... | 22°05'.97    | 162°16'.41    |
| 54 ..... | 22°06'.29    | 162°16'.85    |
| 55 ..... | 22°34'.57    | 164°47'.27    |
| 56 ..... | 22°47'.60    | 166°38'.23    |
| 57 ..... | 24°03'.82    | 168°27'.91    |
| 58 ..... | 24°25'.76    | 170°45'.39    |
| 59 ..... | 24°46'.54    | 171°53'.03    |
| 60 ..... | 25°07'.60    | 174°28'.71    |
| 61 ..... | 27°05'.82    | 176°35'.51    |
| 62 ..... | 27°27'.32    | 178°38'.66    |
| 63 ..... | 27°28'.93    | 178°43'.56    |
| 64 ..... | 27°30'.64    | 178°48'.40    |
| 65 ..... | 27°32'.74    | 178°52'.96    |
| 66 ..... | 27°35'.06    | 178°57'.30    |
| 67 ..... | 27°37'.89    | 179°01'.49    |
| 68 ..... | 27°40'.90    | 179°05'.60    |
| 69 ..... | 27°44'.17    | 179°09'.41    |
| 70 ..... | 27°47'.74    | 179°12'.85    |
| 71 ..... | 27°51'.45    | 179°16'.00    |
| 72 ..... | 27°55'.32    | 179°18'.82    |
| 73 ..... | 27°59'.33    | 179°21'.13    |
| 74 ..... | 28°03'.49    | 179°23'.15    |
| 75 ..... | 28°07'.82    | 179°24'.76    |
| 76 ..... | 28°12'.31    | 179°26'.18    |
| 77 ..... | 28°16'.95    | 179°27'.05    |
| 78 ..... | 28°21'.61    | 179°27'.63    |
| 79 ..... | 28°26'.18    | 179°27'.77    |
| 80 ..... | 28°30'.87    | 179°27'.48    |
| 81 ..... | 28°35'.61    | 179°26'.95    |
| 82 ..... | 28°40'.09    | 179°25'.75    |
| 83 ..... | 28°44'.46    | 179°24'.31    |
| 84 ..... | 28°48'.70    | 179°22'.50    |
| 85 ..... | 28°52'.81    | 179°20'.43    |
| 86 ..... | 28°56'.71    | 179°17'.77    |
| 87 ..... | 29°00'.58    | 179°14'.92    |
| 88 ..... | 29°04'.18    | 179°11'.69    |



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**TABLE D-1—OUTER BOUNDARY—Continued**

| Point     | Latitude (N) | Longitude (W) |
|-----------|--------------|---------------|
| 89 .....  | 29°07'.62    | 179°08'.20    |
| 90 .....  | 29°10'.86    | 179°04'.37    |
| 91 .....  | 29°13'.76    | 179°00'.21    |
| 92 .....  | 29°16'.24    | 178°55'.78    |
| 93 .....  | 29°18'.51    | 178°51'.26    |
| 94 .....  | 29°20'.45    | 178°46'.50    |
| 95 .....  | 29°22'.26    | 178°41'.67    |
| 96 .....  | 29°23'.52    | 178°36'.64    |
| 97 .....  | 29°24'.53    | 178°31'.54    |
| 98 .....  | 29°25'.16    | 178°26'.31    |
| 99 .....  | 29°25'.42    | 178°20'.92    |
| 100 ..... | 29°25'.29    | 178°16'.70    |

**TABLE D-2—INNER BOUNDARY AROUND KURE ATOLL, MIDWAY ATOLL, AND PEARL AND HERMES ATOLL**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 27°14'.76    | 176°29'.87    |
| 2 .....  | 27°24'.95    | 177°33'.31    |
| 3 .....  | 27°35'.87    | 178°29'.90    |
| 4 .....  | 27°36'.64    | 178°33'.93    |
| 5 .....  | 27°37'.53    | 178°37'.32    |
| 6 .....  | 27°38'.60    | 178°40'.65    |
| 7 .....  | 27°39'.85    | 178°43'.90    |
| 8 .....  | 27°41'.28    | 178°47'.05    |
| 9 .....  | 27°42'.89    | 178°50'.10    |
| 10 ..... | 27°44'.66    | 178°53'.03    |
| 11 ..... | 27°46'.59    | 178°55'.83    |
| 12 ..... | 27°48'.67    | 178°58'.49    |
| 13 ..... | 27°50'.89    | 179°01'.00    |
| 14 ..... | 27°53'.22    | 179°03'.39    |
| 15 ..... | 27°55'.69    | 179°05'.61    |
| 16 ..... | 27°58'.29    | 179°07'.61    |
| 17 ..... | 28°01'.01    | 179°09'.47    |
| 18 ..... | 28°03'.81    | 179°11'.10    |
| 19 ..... | 28°06'.71    | 179°12'.53    |
| 20 ..... | 28°09'.67    | 179°13'.75    |
| 21 ..... | 28°12'.70    | 179°14'.75    |
| 22 ..... | 28°15'.78    | 179°15'.54    |
| 23 ..... | 28°18'.91    | 179°16'.11    |
| 24 ..... | 28°22'.04    | 179°16'.45    |
| 25 ..... | 28°24'.72    | 179°16'.56    |
| 26 ..... | 28°25'.20    | 179°16'.57    |
| 27 ..... | 28°25'.81    | 179°16'.56    |
| 28 ..... | 28°28'.35    | 179°16'.44    |
| 29 ..... | 28°31'.49    | 179°16'.10    |
| 30 ..... | 28°34'.61    | 179°15'.54    |
| 31 ..... | 28°37'.69    | 179°14'.75    |
| 32 ..... | 28°40'.71    | 179°13'.74    |
| 33 ..... | 28°43'.68    | 179°12'.54    |
| 34 ..... | 28°46'.58    | 179°11'.13    |
| 35 ..... | 28°49'.39    | 179°09'.52    |
| 36 ..... | 28°52'.11    | 179°07'.70    |
| 37 ..... | 28°54'.72    | 179°05'.70    |
| 38 ..... | 28°57'.21    | 179°03'.51    |
| 39 ..... | 28°59'.58    | 179°01'.15    |
| 40 ..... | 29°01'.81    | 178°58'.62    |
| 41 ..... | 29°03'.90    | 178°55'.93    |
| 42 ..... | 29°05'.83    | 178°53'.10    |
| 43 ..... | 29°07'.60    | 178°50'.13    |
| 44 ..... | 29°09'.21    | 178°47'.04    |
| 45 ..... | 29°10'.64    | 178°43'.84    |
| 46 ..... | 29°11'.89    | 178°40'.54    |
| 47 ..... | 29°12'.95    | 178°37'.16    |
| 48 ..... | 29°13'.82    | 178°33'.71    |
| 49 ..... | 29°14'.50    | 178°30'.21    |
| 50 ..... | 29°14'.99    | 178°26'.66    |
| 51 ..... | 29°15'.28    | 178°23'.08    |
| 52 ..... | 29°15'.36    | 178°19'.49    |

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**TABLE D-2—INNER BOUNDARY AROUND KURE ATOLL, MIDWAY ATOLL, AND PEARL AND HERMES ATOLL—Continued**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 53 ..... | 29°15'.25    | 178°15'.90    |
| 54 ..... | 29°14'.94    | 178°12'.32    |
| 55 ..... | 29°14'.43    | 178°08'.78    |
| 56 ..... | 29°03'.47    | 177°12'.07    |
| 57 ..... | 29°02'.55    | 177°07'.29    |
| 58 ..... | 28°38'.96    | 175°35'.47    |
| 59 ..... | 28°38'.67    | 175°34'.35    |
| 60 ..... | 28°34'.91    | 175°19'.74    |
| 61 ..... | 28°26'.24    | 175°10'.65    |
| 62 ..... | 28°24'.61    | 175°08'.95    |
| 63 ..... | 28°24'.53    | 175°09'.04    |
| 64 ..... | 28°20'.09    | 175°04'.91    |
| 65 ..... | 28°16'.05    | 175°01'.92    |
| 66 ..... | 28°11'.78    | 174°59'.33    |
| 67 ..... | 28°07'.29    | 174°57'.23    |
| 68 ..... | 28°02'.63    | 174°55'.68    |
| 69 ..... | 27°57'.84    | 174°54'.62    |
| 70 ..... | 27°53'.01    | 174°54'.05    |
| 71 ..... | 27°48'.12    | 174°54'.05    |
| 72 ..... | 27°43'.28    | 174°54'.62    |
| 73 ..... | 27°38'.48    | 174°55'.71    |
| 74 ..... | 27°33'.81    | 174°57'.32    |
| 75 ..... | 27°29'.30    | 174°59'.43    |
| 76 ..... | 27°25'.00    | 175°02'.03    |
| 77 ..... | 27°20'.93    | 175°05'.07    |
| 78 ..... | 27°17'.18    | 175°08'.59    |
| 79 ..... | 27°13'.73    | 175°12'.47    |
| 80 ..... | 27°10'.59    | 175°16'.67    |
| 81 ..... | 27°07'.88    | 175°21'.25    |
| 82 ..... | 27°05'.57    | 175°26'.09    |
| 83 ..... | 27°03'.66    | 175°31'.15    |
| 84 ..... | 27°02'.22    | 175°36'.40    |
| 85 ..... | 27°01'.29    | 175°41'.78    |
| 86 ..... | 27°00'.73    | 175°47'.22    |
| 87 ..... | 27°00'.68    | 175°52'.74    |
| 88 ..... | 27°01'.09    | 175°58'.16    |
| 89 ..... | 27°01'.99    | 176°03'.53    |
| 90 ..... | 27°03'.34    | 176°08'.81    |
| 91 ..... | 27°05'.12    | 176°13'.91    |
| 92 ..... | 27°07'.37    | 176°18'.79    |
| 93 ..... | 27°09'.98    | 176°23'.40    |
| 94 ..... | 27°13'.02    | 176°27'.74    |
| 95 ..... | 27°13'.77    | 176°28'.70    |

**TABLE D-3—INNER BOUNDARY AROUND LISIANSKI ISLAND, LAYSAN ISLAND, MARO REEF, AND RAITA BANK**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 26°50'.89    | 173°30'.79    |
| 2 .....  | 26°36'.00    | 171°37'.70    |
| 3 .....  | 26°35'.49    | 171°33'.84    |
| 4 .....  | 26°35'.10    | 171°30'.84    |
| 5 .....  | 26°34'.07    | 171°27'.50    |
| 6 .....  | 26°33'.35    | 171°25'.16    |
| 7 .....  | 26°14'.26    | 170°23'.04    |
| 8 .....  | 26°08'.69    | 169°48'.96    |
| 9 .....  | 26°08'.36    | 169°49'.03    |
| 10 ..... | 26°07'.62    | 169°45'.83    |
| 11 ..... | 26°06'.03    | 169°40'.57    |
| 12 ..... | 26°03'.97    | 169°35'.64    |
| 13 ..... | 26°01'.51    | 169°30'.91    |
| 14 ..... | 25°58'.65    | 169°26'.45    |
| 15 ..... | 25°55'.32    | 169°22'.34    |
| 16 ..... | 25°51'.67    | 169°18'.60    |
| 17 ..... | 25°47'.78    | 169°15'.19    |
| 18 ..... | 25°43'.54    | 169°12'.34    |

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TABLE D—3—INNER BOUNDARY AROUND LISIANSKI ISLAND, LAYSAN ISLAND, MARO REEF, AND RAITA BANK—Continued

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 19 ..... | 25°39'.05    | 169°09'.93    |
| 20 ..... | 25°34'.37    | 169°08'.08    |
| 21 ..... | 25°29'.54    | 169°06'.76    |
| 22 ..... | 25°24'.61    | 169°05'.93    |
| 23 ..... | 25°19'.63    | 169°05'.64    |
| 24 ..... | 25°14'.65    | 169°05'.93    |
| 25 ..... | 25°09'.69    | 169°06'.66    |
| 26 ..... | 25°04'.85    | 169°08'.02    |
| 27 ..... | 25°00'.17    | 169°09'.96    |
| 28 ..... | 24°55'.66    | 169°12'.35    |
| 29 ..... | 24°51'.35    | 169°15'.14    |
| 30 ..... | 24°47'.37    | 169°18'.48    |
| 31 ..... | 24°43'.69    | 169°22'.22    |
| 32 ..... | 24°40'.34    | 169°26'.31    |
| 33 ..... | 24°37'.42    | 169°30'.78    |
| 34 ..... | 24°35'.00    | 169°35'.64    |
| 35 ..... | 24°33'.02    | 169°40'.66    |
| 36 ..... | 24°31'.34    | 169°45'.88    |
| 37 ..... | 24°30'.31    | 169°51'.08    |
| 38 ..... | 24°29'.68    | 169°56'.53    |
| 39 ..... | 24°29'.56    | 170°01'.81    |
| 40 ..... | 24°29'.61    | 170°04'.57    |
| 41 ..... | 24°35'.77    | 170°44'.39    |
| 42 ..... | 24°36'.29    | 170°47'.58    |
| 43 ..... | 24°37'.18    | 170°50'.37    |
| 44 ..... | 24°37'.76    | 170°52'.17    |
| 45 ..... | 24°56'.23    | 171°50'.19    |
| 46 ..... | 25°16'.61    | 174°24'.84    |
| 47 ..... | 25°29'.56    | 174°38'.45    |
| 48 ..... | 25°33'.28    | 174°42'.03    |
| 49 ..... | 25°37'.33    | 174°45'.20    |
| 50 ..... | 25°41'.68    | 174°47'.84    |
| 51 ..... | 25°46'.23    | 174°50'.05    |
| 52 ..... | 25°50'.93    | 174°51'.77    |
| 53 ..... | 25°55'.80    | 174°52'.91    |
| 54 ..... | 26°00'.71    | 174°53'.47    |
| 55 ..... | 26°05'.67    | 174°53'.61    |
| 56 ..... | 26°10'.59    | 174°53'.07    |
| 57 ..... | 26°15'.46    | 174°52'.08    |
| 58 ..... | 26°20'.20    | 174°50'.57    |
| 59 ..... | 26°24'.75    | 174°48'.44    |
| 60 ..... | 26°29'.15    | 174°45'.94    |
| 61 ..... | 26°33'.26    | 174°42'.96    |
| 62 ..... | 26°37'.11    | 174°39'.49    |
| 63 ..... | 26°40'.60    | 174°35'.63    |
| 64 ..... | 26°43'.75    | 174°31'.43    |
| 65 ..... | 26°46'.49    | 174°26'.87    |
| 66 ..... | 26°48'.90    | 174°22'.09    |
| 67 ..... | 26°50'.79    | 174°17'.03    |
| 68 ..... | 26°52'.20    | 174°11'.79    |
| 69 ..... | 26°53'.21    | 174°06'.43    |
| 70 ..... | 26°53'.74    | 174°00'.98    |
| 71 ..... | 26°53'.74    | 173°55'.48    |
| 72 ..... | 26°53'.29    | 173°50'.02    |
| 73 ..... | 26°52'.56    | 173°44'.58    |
| 74 ..... | 26°51'.85    | 173°39'.14    |
| 75 ..... | 26°51'.13    | 173°33'.69    |
| 76 ..... | 26°50'.75    | 173°30'.87    |

TABLE D—4—INNER BOUNDARY AROUND GARDNER PINNACLES, FRENCH FRIGATE SHOALS, AND NECKER ISLAND

| Point   | Latitude (N) | Longitude (W) |
|---------|--------------|---------------|
| 1 ..... | 25°49'.64    | 167°52'.66    |
| 2 ..... | 25°49'.70    | 167°52'.65    |
| 3 ..... | 25°48'.99    | 167°48'.35    |

TABLE D—4—INNER BOUNDARY AROUND GARDNER PINNACLES, FRENCH FRIGATE SHOALS, AND NECKER ISLAND—Continued

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 4 .....  | 25°47'.09    | 167°36'.72    |
| 5 .....  | 25°39'.84    | 167°26'.48    |
| 6 .....  | 25°35'.10    | 167°19'.79    |
| 7 .....  | 25°10'.43    | 166°45'.00    |
| 8 .....  | 24°40'.91    | 166°03'.36    |
| 9 .....  | 24°35'.64    | 165°34'.99    |
| 10 ..... | 24°23'.78    | 164°31'.12    |
| 11 ..... | 24°23'.59    | 164°31'.14    |
| 12 ..... | 24°23'.31    | 164°29'.74    |
| 13 ..... | 24°21'.85    | 164°24'.52    |
| 14 ..... | 24°20'.10    | 164°19'.39    |
| 15 ..... | 24°17'.75    | 164°14'.56    |
| 16 ..... | 24°14'.99    | 164°09'.97    |
| 17 ..... | 24°11'.86    | 164°05'.69    |
| 18 ..... | 24°08'.30    | 164°01'.80    |
| 19 ..... | 24°04'.48    | 163°58'.23    |
| 20 ..... | 24°00'.27    | 163°55'.22    |
| 21 ..... | 23°55'.85    | 163°52'.59    |
| 22 ..... | 23°51'.17    | 163°50'.56    |
| 23 ..... | 23°46'.33    | 163°48'.98    |
| 24 ..... | 23°41'.37    | 163°47'.99    |
| 25 ..... | 23°36'.34    | 163°47'.56    |
| 26 ..... | 23°31'.27    | 163°47'.60    |
| 27 ..... | 23°26'.27    | 163°48'.28    |
| 28 ..... | 23°21'.34    | 163°49'.50    |
| 29 ..... | 23°16'.53    | 163°51'.14    |
| 30 ..... | 23°11'.96    | 163°53'.47    |
| 31 ..... | 23°07'.54    | 163°56'.15    |
| 32 ..... | 23°03'.46    | 163°59'.38    |
| 33 ..... | 22°59'.65    | 164°03'.01    |
| 34 ..... | 22°56'.27    | 164°07'.10    |
| 35 ..... | 22°53'.22    | 164°11'.49    |
| 36 ..... | 22°50'.60    | 164°16'.18    |
| 37 ..... | 22°48'.48    | 164°21'.16    |
| 38 ..... | 22°46'.73    | 164°26'.28    |
| 39 ..... | 22°45'.49    | 164°31'.60    |
| 40 ..... | 22°44'.83    | 164°37'.03    |
| 41 ..... | 22°44'.65    | 164°42'.51    |
| 42 ..... | 22°44'.92    | 164°47'.99    |
| 43 ..... | 22°45'.11    | 164°49'.52    |
| 44 ..... | 22°45'.39    | 164°51'.48    |
| 45 ..... | 22°45'.17    | 164°51'.53    |
| 46 ..... | 22°50'.26    | 165°34'.99    |
| 47 ..... | 22°55'.50    | 166°19'.63    |
| 48 ..... | 22°55'.93    | 166°23'.32    |
| 49 ..... | 22°57'.41    | 166°36'.00    |
| 50 ..... | 23°03'.75    | 166°45'.00    |
| 51 ..... | 23°05'.48    | 166°47'.45    |
| 52 ..... | 24°12'.70    | 168°22'.86    |
| 53 ..... | 24°12'.88    | 168°22'.78    |
| 54 ..... | 24°16'.05    | 168°27'.28    |
| 55 ..... | 24°19'.15    | 168°31'.66    |
| 56 ..... | 24°22'.27    | 168°35'.95    |
| 57 ..... | 24°25'.71    | 168°39'.94    |
| 58 ..... | 24°29'.51    | 168°43'.55    |
| 59 ..... | 24°33'.67    | 168°46'.63    |
| 60 ..... | 24°38'.06    | 168°49'.29    |
| 61 ..... | 24°42'.68    | 168°51'.46    |
| 62 ..... | 24°47'.45    | 168°53'.12    |
| 63 ..... | 24°52'.34    | 168°54'.28    |
| 64 ..... | 24°57'.32    | 168°54'.82    |
| 65 ..... | 25°02'.32    | 168°54'.95    |
| 66 ..... | 25°07'.30    | 168°54'.43    |
| 67 ..... | 25°12'.19    | 168°53'.32    |
| 68 ..... | 25°16'.99    | 168°51'.76    |
| 69 ..... | 25°21'.57    | 168°49'.60    |
| 70 ..... | 25°25'.94    | 168°46'.93    |
| 71 ..... | 25°30'.09    | 168°43'.86    |
| 72 ..... | 25°33'.89    | 168°40'.42    |
| 73 ..... | 25°37'.37    | 168°36'.52    |

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**TABLE D-4—INNER BOUNDARY AROUND GARDNER PINNACLES, FRENCH FRIGATE SHOALS, AND NECKER ISLAND—Continued**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 74 ..... | 25°40'.49    | 168°32'.24    |
| 75 ..... | 25°43'.24    | 168°27'.68    |
| 76 ..... | 25°45'.57    | 168°22'.82    |
| 77 ..... | 25°47'.43    | 168°17'.76    |
| 78 ..... | 25°48'.79    | 168°12'.47    |
| 79 ..... | 25°49'.72    | 168°07'.09    |
| 80 ..... | 25°50'.11    | 168°01'.62    |
| 81 ..... | 25°50'.18    | 168°00'.09    |

**TABLE D-5—INNER BOUNDARY AROUND NIHOA ISLAND**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 1 .....  | 23°52'.82    | 161°44'.54    |
| 2 .....  | 23°52'.10    | 161°41'.20    |
| 3 .....  | 23°51'.18    | 161°37'.92    |
| 4 .....  | 23°50'.08    | 161°34'.71    |
| 5 .....  | 23°48'.79    | 161°31'.58    |
| 6 .....  | 23°47'.33    | 161°28'.55    |
| 7 .....  | 23°45'.69    | 161°25'.62    |
| 8 .....  | 23°43'.88    | 161°22'.81    |
| 9 .....  | 23°41'.92    | 161°20'.13    |
| 10 ..... | 23°39'.80    | 161°17'.60    |
| 11 ..... | 23°37'.54    | 161°15'.21    |
| 12 ..... | 23°35'.14    | 161°12'.99    |
| 13 ..... | 23°32'.62    | 161°10'.93    |
| 14 ..... | 23°29'.99    | 161°09'.05    |
| 15 ..... | 23°27'.25    | 161°07'.35    |
| 16 ..... | 23°24'.42    | 161°05'.85    |
| 17 ..... | 23°21'.51    | 161°04'.54    |
| 18 ..... | 23°18'.52    | 161°03'.43    |
| 19 ..... | 23°15'.48    | 161°02'.53    |
| 20 ..... | 23°12'.39    | 161°01'.84    |
| 21 ..... | 23°09'.27    | 161°01'.35    |
| 22 ..... | 23°06'.13    | 161°01'.09    |
| 23 ..... | 23°02'.97    | 161°01'.03    |
| 24 ..... | 22°59'.82    | 161°01'.19    |
| 25 ..... | 22°56'.69    | 161°01'.57    |
| 26 ..... | 22°53'.58    | 161°02'.15    |
| 27 ..... | 22°50'.51    | 161°02'.95    |
| 28 ..... | 22°47'.50    | 161°03'.95    |
| 29 ..... | 22°44'.55    | 161°05'.15    |
| 30 ..... | 22°41'.67    | 161°06'.54    |
| 31 ..... | 22°38'.88    | 161°08'.13    |
| 32 ..... | 22°36'.19    | 161°09'.90    |
| 33 ..... | 22°33'.61    | 161°11'.85    |
| 34 ..... | 22°31'.14    | 161°13'.97    |
| 35 ..... | 22°28'.81    | 161°16'.25    |
| 36 ..... | 22°26'.61    | 161°18'.69    |
| 37 ..... | 22°24'.56    | 161°21'.26    |
| 38 ..... | 22°22'.66    | 161°23'.97    |
| 39 ..... | 22°20'.92    | 161°26'.80    |
| 40 ..... | 22°19'.35    | 161°29'.74    |
| 41 ..... | 22°17'.95    | 161°32'.78    |
| 42 ..... | 22°16'.73    | 161°35'.90    |
| 43 ..... | 22°15'.70    | 161°39'.10    |
| 44 ..... | 22°14'.85    | 161°42'.37    |
| 45 ..... | 22°14'.20    | 161°45'.68    |
| 46 ..... | 22°13'.73    | 161°49'.03    |
| 47 ..... | 22°13'.47    | 161°52'.41    |
| 48 ..... | 22°13'.40    | 161°55'.80    |
| 49 ..... | 22°13'.53    | 161°59'.18    |

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**TABLE D-5—INNER BOUNDARY AROUND NIHOA ISLAND—Continued**

| Point    | Latitude (N) | Longitude (W) |
|----------|--------------|---------------|
| 50 ..... | 22°13'.85    | 162°02'.55    |
| 51 ..... | 22°14'.31    | 162°05'.45    |
| 52 ..... | 22°14'.37    | 162°05'.89    |
| 53 ..... | 22°14'.59    | 162°06'.88    |
| 54 ..... | 22°15'.87    | 162°12'.18    |
| 55 ..... | 22°17'.70    | 162°17'.31    |
| 56 ..... | 22°19'.97    | 162°22'.20    |
| 57 ..... | 22°22'.73    | 162°26'.84    |
| 58 ..... | 22°25'.88    | 162°31'.15    |
| 59 ..... | 22°29'.41    | 162°35'.09    |
| 60 ..... | 22°33'.28    | 162°38'.61    |
| 61 ..... | 22°37'.47    | 162°41'.72    |
| 62 ..... | 22°41'.93    | 162°44'.34    |
| 63 ..... | 22°46'.63    | 162°46'.47    |
| 64 ..... | 22°51'.48    | 162°48'.05    |
| 65 ..... | 22°56'.46    | 162°49'.09    |
| 66 ..... | 23°01'.50    | 162°49'.58    |
| 67 ..... | 23°06'.58    | 162°49'.49    |
| 68 ..... | 23°11'.61    | 162°48'.89    |
| 69 ..... | 23°16'.57    | 162°47'.70    |
| 70 ..... | 23°21'.36    | 162°45'.98    |
| 71 ..... | 23°26'.02    | 162°43'.75    |
| 72 ..... | 23°30'.40    | 162°41'.01    |
| 73 ..... | 23°34'.51    | 162°37'.83    |
| 74 ..... | 23°38'.26    | 162°34'.18    |
| 75 ..... | 23°41'.69    | 162°30'.18    |
| 76 ..... | 23°44'.72    | 162°25'.79    |
| 77 ..... | 23°47'.36    | 162°21'.11    |
| 78 ..... | 23°49'.55    | 162°16'.16    |
| 79 ..... | 23°51'.24    | 162°10'.99    |
| 80 ..... | 23°52'.44    | 162°05'.63    |
| 81 ..... | 23°53'.14    | 162°00'.25    |
| 82 ..... | 23°53'.36    | 161°54'.75    |
| 83 ..... | 23°53'.09    | 161°49'.28    |
| 84 ..... | 23°52'.82    | 161°47'.09    |
| 85 ..... | 23°52'.39    | 161°44'.67    |

[73 FR 73601, Dec. 3, 2008]

**APPENDIX E TO PART 404—CONTENT AND SYNTAX FOR PAPAHAŌNAUMOKUĀKEA SHIP REPORTING SYSTEM**

Immediately upon crossing the reporting area boundary, notification should be sent as a direct e-mail to [nwhi.notifications@noaa.gov](mailto:nwhi.notifications@noaa.gov) in the prescribed format and data syntax shown. Use of batch message routing services which may delay receipt of a report should not be used. Failure to follow the exact format (*e.g.*, extra information, extraneous characters, or double spacing) may cause the automated computer system to reject your report. NOTE: Report transmission costs via INMARSAT-C will be assumed by NOAA.

**E.1 ENTRY NOTIFICATION FORMAT**

Immediately upon entering the Reporting Area, vessels required to participate must provide the following information.

TABLE E.1—INFORMATION REQUIRED FOR ENTRY NOTIFICATION

| Telegraphy | Function                                               | Information required                                                                                                                                                                                                                                                                                                                                                                                             | Example field text                                                                                           |
|------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
|            | System identifier                                      | CORAL SHIPREP //                                                                                                                                                                                                                                                                                                                                                                                                 | CORAL SHIPREP //                                                                                             |
| A .....    | Ship .....                                             | Vessel name/call sign/flag/IMO number/Federal documentation or State registration number if applicable //                                                                                                                                                                                                                                                                                                        | A/OCEAN VOYAGER/C5FU8/BAHAMAS/IMO 9359165//                                                                  |
| B .....    | Date, time (UTC), and month of entry.                  | A 6-digit group giving day of month (first two digits), hours and minutes (last four digits) in coordinated universal time, suffixed by the letter Z (indicating time in UTC), and three letters indicating month //                                                                                                                                                                                             | B/271107Z DEC//                                                                                              |
| C .....    | Position .....                                         | A 4-digit group giving latitude in degrees and minutes, suffixed with the letter N (indicating north), followed by a single /, and a five-digit group giving longitude in degrees and minutes, suffixed with the letter W (indicating west) // [Report in the World Geodetic System 1984 Datum (WGS-84)].                                                                                                        | C/2728N/17356W//                                                                                             |
| E .....    | True course ....                                       | 3-digit number indicating true course // .....                                                                                                                                                                                                                                                                                                                                                                   | E/180//                                                                                                      |
| F .....    | Speed in knots and tenths.                             | 3-digit group indicating knots decimal tenths //                                                                                                                                                                                                                                                                                                                                                                 | F/20.5//                                                                                                     |
| I .....    | Destination and estimated time of arrival.             | Name of port city/country/estimated arrival date and time group expressed as in (B) //                                                                                                                                                                                                                                                                                                                           | I/SEATTLE/USA/311230Z DEC//                                                                                  |
| L .....    | Intended route through the reporting area.             | Route information should be reported as a direct rhumbline (RL) course through the reporting area and intended speed (expressed as in E and F) or a series of waypoints (WP). Each waypoint entry should be reported as latitude and longitude, expressed as in (C), and intended speed between waypoints (as in F) // (Note: As many "L" lines as needed may be used to describe the vessel's intended route.). | L/RL/215/20.5//<br>-OR-<br>L/WP/2734N/17352W/20.5//<br>L/WP/2641N/17413W/20.5//<br>L/WP/2605N/17530W/20.5//  |
| O .....    | Vessel draft in meters.                                | Maximum present static draft reported in meters decimal centimeters //                                                                                                                                                                                                                                                                                                                                           | O/11.50//                                                                                                    |
| P .....    | Categories of Hazardous Cargoes*.                      | Classification Code (e.g. IMDG, IBC, IGC, INF) / and all corresponding Categories of Hazardous Cargoes (delimited by commas) // Note: If necessary, use a separate "P" line for each type of Classification Code.                                                                                                                                                                                                | P/IMDG/1.4G,2.1,2.2,2.3,3.4,1.6,1.8,9//                                                                      |
| Q .....    | Defects or deficiencies**.                             | Brief details of defects, damage, deficiencies or limitations that restrict maneuverability or impair normal navigation // (If none, enter the number zero.).                                                                                                                                                                                                                                                    | Q/Include details as required//                                                                              |
| R .....    | Pollution incident or goods lost overboard**.          | Description of pollution incident or goods lost overboard within the Monument, the Reporting Area, or the U.S. Exclusive Economic Zone//(If none, enter the number zero.).                                                                                                                                                                                                                                       | R/0//                                                                                                        |
| T .....    | Contact information of ship's agent or owner.          | Name/address/and phone number of ship's agent or owner //                                                                                                                                                                                                                                                                                                                                                        | T/JOHN DOE/GENERIC SHIPPING COMPANY INC, 6101 ACME ROAD, ROOM 123, CITY, STATE, COUNTRY 12345/123-123-1234// |
| U .....    | Ship size (length overall and gross tonnage) and type. | Length overall reported in meters decimal centimeters/number of gross tons/type of ship (e.g. bulk carrier, chemical tanker, oil tanker, gas tanker, container, general cargo, fishing vessel, research, passenger, OBO, RORO) //                                                                                                                                                                                | U/294.14/54592/CONTAINER SHIP//                                                                              |
| W .....    | Persons .....                                          | Total number of persons on board // .....                                                                                                                                                                                                                                                                                                                                                                        | W/15//                                                                                                       |

## TABLE E.1 NOTES

\*Categories of hazardous cargoes means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the Code for the Safe Carriage of the Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships (INF Code).

\*\*In accordance with the provisions of the MARPOL Convention, ships must report information relating to defects, damage, deficiencies or other limitations as well as, if necessary, information relating to pollution incidents or loss of cargo. Safety related reports must be provided to CORAL SHIPREP without delay should a ship suffer damage, failure or breakdown affecting the safety of the ship (Item Q), or if a ship makes a marked deviation from a route, course or speed previously advised (Item L). Pollution or cargo lost overboard must be reported without delay (Item R).

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**E.2 PRIOR NOTIFICATION OF ENTRY FORMAT**

Vessels of the United States less than 300 gross tonnage that are not equipped with on-board e-mail capability must provide the following notification of entry at least 72 hrs, but no longer than 1 month, prior to entry date, utilizing the data syntax described above. Notification may be made via the following communication methods, listed in order of preference: E-mail [*nwhi.notifications@noaa.gov*]; fax [1-808-397-2662]; telephone [1-866-478-NWHI (6944), 1-808-395-NWHI (6944)].

**TABLE E.2—INFORMATION REQUIRED FOR PRIOR NOTIFICATION**

|                    |                                                                  |
|--------------------|------------------------------------------------------------------|
| System identifier. | PRIOR NOTICE //                                                  |
| Items .....        | A, B, C (as applicable), I, L, O, P (as applicable), Q, T, U, W. |

**E.3 EXIT NOTIFICATION FORMAT**

Immediately upon leaving the Reporting Area, vessels required to participate must provide the following information. Vessels of the United States less than 300 gross tonnage that are not equipped with onboard e-mail capability must provide the following Exit Notification information within 12 hrs of leaving the Reporting Area. Notification may be made via the following communication methods, listed in order of preference: E-mail [*nwhi.notifications@noaa.gov*]; fax [1-808-397-2662]; telephone [1-866-478-NWHI (6944), 1-808-395-NWHI (6944)].

**TABLE E.3—INFORMATION REQUIRED FOR EXIT NOTIFICATION**

| Telegraphy | Function                                    | Information required                                                                                                                                                                                                                                                                                       | Example field text                         |
|------------|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
|            | System identifier                           | CORAL SHIPREP //                                                                                                                                                                                                                                                                                           | CORAL SHIPREP//                            |
| A .....    | Ship .....                                  | Vessel name / call sign / flag / IMO number / Federal documentation or State registration number if applicable //                                                                                                                                                                                          | A/OCEAN VOYAGER/C5FU8/BAHAMAS/IMO9359165// |
| B .....    | Date, time (UTC), and month of exit.        | A 6-digit group giving day of month (first two digits), hours and minutes (last four digits), suffixed by the letter Z indicating time in UTC, and three letters indicating month//.                                                                                                                       | B/271657Z DEC//                            |
| C .....    | Position .....                              | A 4-digit group giving latitude in degrees and minutes, suffixed with the letter N (indicating north), followed by a single //, and a five digit group giving longitude in degrees and minutes, suffixed with the letter W (indicating west) // [Report in the World Geodetic System 1984 Datum (WGS–84)]. | C/2605N/17530W//                           |
| R .....    | Pollution incident or goods lost overboard. | Description of pollution incident or goods lost overboard within the Monument, the Reporting Area, or the U.S. Exclusive Economic Zone // (If none, enter the number zero).                                                                                                                                | R/0//                                      |

**E.4 EXAMPLE ENTRY REPORT**

CORAL SHIPREP//  
A/SEA ROVER/WFSU/USA/IMO 8674208/DOC  
602011//  
B/010915Z JUN//  
C/2636N/17600W//  
E/050//  
F/20.0//  
I/LOS ANGELES/USA/081215Z JUN//  
L/RL/050/20.0//  
O/10.90//  
P/IMDG/3,4.1,6.1,8,9//  
Q/0//  
R/0//  
T/JOHN DOE/CONTAINER SHIPPERS INC,  
500 PORT ROAD, ROOM 123, LOS ANGELES,  
CA, USA 90050/213–123–1234//

U/199.90/27227/CONTAINER SHIP//  
W/15//

**E.5 EXAMPLE EXIT REPORT**

CORAL SHIPREP//  
A/SEA ROVER/WFSU/USA/IMO 8674208/DOC  
602011//  
B/011515Z JUN//  
C/2747N/17416W//  
R/0//  
[73 FR 73603, Dec. 3, 2008]

## PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

### Subpart A—General Provisions

Sec.

424.01 Scope and purpose.

424.02 Definitions.

### Subpart B—Revision of the Lists

424.10 General.

424.11 Factors for listing, delisting, or reclassifying species.

424.12 Criteria for designating critical habitat.

424.13 Sources of information and relevant data.

424.14 Petitions.

424.15 Notices of review.

424.16 Proposed rules.

424.17 Time limits and required actions.

424.18 Final rules—general.

424.19 Final rules—impact analysis of critical habitat.

424.20 Emergency rules.

424.21 Periodic review.

AUTHORITY: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

SOURCE: 49 FR 38908, Oct. 1, 1984, unless otherwise noted.

### Subpart A—General Provisions

#### § 424.01 Scope and purpose.

(a) Part 424 provides rules for revising the Lists of Endangered and Threatened Wildlife and Plants and, where appropriate, designating or revising their critical habitats. Criteria are provided for determining species to be endangered or threatened and for designating critical habitats. Procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species also are established.

(b) The purpose of these rules is to interpret and implement those portions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that pertain to the listing of species and the determination of critical habitats.

#### § 424.02 Definitions.

(a) The definitions of terms in 50 CFR 402.02 shall apply to this part 424, except as otherwise stated.

(b) *Candidate* means any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule.

(c) *Conservation, conserve, and conserving* mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(d) *Critical habitat* means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

(e) *Endangered species* means a species that is in danger of extinction throughout all or a significant portion of its range.

(f) *List or lists* means the Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11(h) or 17.12(h).

(g) *Plant* means any member of the plant kingdom, including, without limitation, seeds, roots, and other parts thereof.

(h) *Public hearing* means an informal hearing to provide the public with the opportunity to give comments and to permit an exchange of information and opinion on a proposed rule.

(i) *Secretary* means the Secretary of the Interior or the Secretary of Commerce, as appropriate, or their authorized representatives.

(j) *Special management considerations or protection* means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

(k) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.

(l) *State agency* means any State agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(m) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(n) *Wildlife or fish and wildlife* means any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

## Subpart B—Revision of the Lists

### § 424.10 General.

The Secretary may add a species to the lists or designate critical habitat, delete a species or critical habitat, change the listed status of a species, revise the boundary of an area designated as critical habitat, or adopt or modify special rules (see 50 CFR 17.40–17.48 and parts 222 and 227) applied to a threatened species only in accordance with the procedures of this part.

### § 424.11 Factors for listing, delisting, or reclassifying species.

(a) Any species or taxonomic group of species (e.g., genus, subgenus) as defined in § 424.02(k) is eligible for listing under the Act. A taxon of higher rank than species may be listed only if all included species are individually found to be endangered or threatened. In de-

termining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group.

(b) The Secretary shall make any determination required by paragraphs (c) and (d) of this section *solely* on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination.

(c) A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Over utilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

(d) The factors considered in delisting a species are those in paragraph (c) of this section as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction*. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery*. The principal goal of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is to

return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

(e) The fact that a species of fish, wildlife, or plant is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see part 23 of this title 50) or a similar international agreement on such species, or has been identified as requiring protection from unrestricted commerce by any foreign nation, or to be in danger of extinction or likely to become so within the foreseeable future by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish, wildlife, or plants, may constitute evidence that the species is endangered or threatened. The weight given such evidence will vary depending on the international agreement in question, the criteria pursuant to which the species is eligible for protection under such authorities, and the degree of protection afforded the species. The Secretary shall give consideration to any species protected under such an international agreement, or by any State or foreign nation, to determine whether the species is endangered or threatened.

(f) The Secretary shall take into account, in making determinations under paragraph (c) or (d) of this section, those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

**§ 424.12 Criteria for designating critical habitat.**

(a) Critical habitat shall be specified to the maximum extent prudent and determinable at the time a species is

proposed for listing. If designation of critical habitat is not prudent or if critical habitat is not determinable, the reasons for not designating critical habitat will be stated in the publication of proposed and final rules listing a species. A final designation of critical habitat shall be made on the basis of the best scientific data available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19.

(1) A designation of critical habitat is not prudent when one or both of the following situations exist:

(i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

(ii) Such designation of critical habitat would not be beneficial to the species.

(2) Critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

(b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering the designation of critical habitat, the Secretary shall



#### § 424.13

focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

(c) Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the FEDERAL REGISTER and made available from the lead field office of the Service responsible for such designation. Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.*, trees, sand bars) shall not be used in any textual description used to clarify or refine the boundaries of critical habitat.

(d) When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

*Example:* Several dozen or more small ponds, lakes, and springs are found in a small local area. The entire area could be designated critical habitat if it were concluded that the upland areas were essential to the conservation of an aquatic species located in the ponds and lakes.

(e) The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inad-

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equate to ensure the conservation of the species.

(f) Critical habitat may be designated for those species listed as threatened or endangered but for which no critical habitat has been previously designated.

(g) Existing critical habitat may be revised according to procedures in this section as new data become available to the Secretary.

(h) Critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction.

[49 FR 38908, Oct. 1, 1984, as amended at 77 FR 25622, May 1, 2012]

#### § 424.13 Sources of information and relevant data.

When considering any revision of the lists, the Secretary shall consult as appropriate with affected States, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties.

#### § 424.14 Petitions.

(a) *General.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken. Such a document must clearly identify itself as a petition and be dated. It must contain the name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. The Secretary shall acknowledge in writing receipt of such a petition within 30 days.

(b) *Petitions to list, delist, or reclassify species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to list, delist, or reclassify a species, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the

petitioned action may be warranted. For the purposes of this section, “substantial information” is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making a finding under paragraph (b)(1) of this section, the Secretary shall consider whether such petition—

(i) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;

(ii) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(iii) Provides information regarding the status of the species over all or a significant portion of its range; and

(iv) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petitioner may provide information that describes any recommended critical habitat as to boundaries and physical features, and indicates any benefits and/or adverse effects on the species that would result from such designation. Such information, however, will not be a basis for the determination of the substantiality of a petition.

(3) Upon making a positive finding under paragraph (b)(1) of this section, the Secretary shall commence a review of the status of the species concerned and shall make, within 12 months of receipt of such petition, one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the FEDERAL REGISTER a proposed regulation to im-

plement the action pursuant to § 424.16 of this part, or

(iii) The petitioned action is warranted, but that—

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and

(B) Expeditionous progress is being made to list, delist, or reclassify qualified species,

in which case, such finding shall be promptly published in the FEDERAL REGISTER together with a description and evaluation of the reasons and data on which the finding is based.

(4) If a finding is made under paragraph (b)(3)(iii) of this section with regard to any petition, the Secretary shall, within 12 months of such finding, again make one of the findings described in paragraph (b)(3) with regard to such petition, but no further finding of substantial information will be required.

(c) *Petitions to revise critical habitat.*

(1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the FEDERAL REGISTER and so notify the petitioner.

(2) In making the finding required by paragraph (c)(1) of this section, the Secretary shall consider whether a petition contains—

(i) Information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

(3) Within 12 months after receiving a petition found under paragraph (c)(1) of

#### § 424.15

this section to present substantial information indicating that revision of a critical habitat may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the FEDERAL REGISTER.

(d) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

#### § 424.15 Notices of review.

(a) If the Secretary finds that one of the actions described in § 424.10 may be warranted, but that the available evidence is not sufficiently definitive to justify proposing the action at that time, a notice of review may be published in the FEDERAL REGISTER. The notice will describe the measure under consideration, briefly explain the reasons for considering the action, and solicit comments and additional information on the action under consideration.

(b) The Secretary from time to time also may publish notices of review containing the names of species that are considered to be candidates for listing under the Act and indicating whether sufficient scientific or commercial information is then available to warrant proposing to list such species, the names of species no longer being considered for listing, or the names of listed species being considered for delisting or reclassification. However, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

(c) Such notices of review will invite comment from all interested parties regarding the status of the species named. At the time of publication of such a notice, notification in writing will be sent to State agencies in any affected States, known affected Federal agencies, and, to the greatest extent practicable, through the Secretary of State, to the governments of any for-

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eign countries in which the subject species normally occur.

#### § 424.16 Proposed rules.

(a) *General.* Based on the information received through §§ 424.13, 424.14, 424.15, and 424.21, or through other available avenues, the Secretary may propose revising the lists as described in § 424.10.

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule proposes to designate or revise critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat or may be affected by such designation. For any proposed rule to designate or revise critical habitat, the detailed description of the action will include a map of the critical habitat area, and may also include rule text that clarifies or modifies the map. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species and/or its designated critical habitat.

(c) *Procedures—(1) Notifications.* In the case of any proposed rule to list, delist, or reclassify a species, or to designate or revise critical habitat, the Secretary shall—

(i) Publish notice of the proposal in the FEDERAL REGISTER;

(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

(iii) Give notice of the proposed regulation to any Federal agencies, local authorities, or private individuals or

organizations known to be affected by the rule;

(iv) Insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to list, delist, or reclassify a species to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation;

(v) Give notice of the proposed regulation to such professional scientific organizations as the Secretary deems appropriate; and

(vi) Publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.

(2) *Period of public comments.* At least 60 days shall be allowed for public comment following publication in the FEDERAL REGISTER of a rule proposing the listing, delisting, or reclassification of a species, or the designation or revision of critical habitat. All other proposed rules shall be subject to a comment period of at least 30 days following publication in the FEDERAL REGISTER. The Secretary may extend or reopen the period for public comment on a proposed rule upon a finding that there is good cause to do so. A notice of any such extension or reopening shall be published in the FEDERAL REGISTER, and shall specify the basis for so doing.

(3) *Public hearings.* The Secretary shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list, delist, or reclassify a species, or to designate or revise critical habitat. Notice of the location and time of any such hearing shall be published in the FEDERAL REGISTER not less than 15 days before the hearing is held.

[49 FR 38908, Oct. 1, 1984, as amended at 77 FR 25622, May 1, 2012]

#### § 424.17 Time limits and required actions.

(a) *General.* (1) Within 1 year of the publication of a rule proposing to determine whether a species is an endangered or threatened species, or to designate or revise critical habitat, the

Secretary shall publish one of the following in the FEDERAL REGISTER:

(i) A final rule to implement such determination or revision,

(ii) A finding that such revision should not be made,

(iii) A notice withdrawing the proposed rule upon a finding that available evidence does not justify the action proposed by the rule, or

(iv) A notice extending such 1-year period by an additional period of not more than 6 months because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

(2) If an extension is made under paragraph (a)(1)(iv) of this section, the Secretary shall, within the extended period, take one of the actions described in paragraphs (a)(1) (i), (ii), or (iii) of this section.

(3) If a proposed rule is withdrawn under paragraph (a)(1)(iii) of this section, the notice of withdrawal shall set forth the basis upon which the proposed rule has been found not to be supported by available evidence. The Secretary shall not again propose a rule withdrawn under such provision except on the basis of sufficient new information that warrants a reproposal.

(b) *Critical habitat designations.* A final rule designating critical habitat of an endangered or a threatened species shall to the extent permissible under § 424.12 be published concurrently with the final rule listing such species, unless the Secretary deems that—

(1) It is essential to the conservation of such species that it be listed promptly; or

(2) Critical habitat of such species is not then determinable,

in which case, the Secretary, with respect to the proposed regulation to designate such habitat, may extend the 1-year period specified in paragraph (a) of this section by not more than one additional year. Not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

## § 424.18

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### § 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the FEDERAL REGISTER. This publication will contain a detailed description of the action being finalized, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat will also provide a summary of factors affecting the species.

(1) For a rule designating or revising critical habitat, the detailed description of the action will include a map of the critical habitat area, and may also include rule text that clarifies or modifies the map. The map itself, as modified by any rule text, constitutes the official boundary of the designation.

(i) The Service responsible for the designation will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at [www.regulations.gov](http://www.regulations.gov), and at the lead field office of the Service responsible for the designation.

(ii) In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at [www.regulations.gov](http://www.regulations.gov)).

(2) The rule will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary,

may adversely modify such habitat or be affected by such designation.

(b) *Effective date.* A final rule shall take effect—

(1) Not less than 30 days after it is published in the FEDERAL REGISTER, except as otherwise provided for good cause found and published with the rule; and

(2) Not less than 90 days after (i) publication in the FEDERAL REGISTER of the proposed rule, and (ii) actual notification of any affected State agencies and counties or equivalent jurisdictions in accordance with § 424.16(c)(1)(ii).

(c) *Disagreement with State agency.* If a State agency, given notice of a proposed rule in accordance with § 424.16(c)(1)(ii), submits comments disagreeing in whole or in part with a proposed rule, and the Secretary issues a final rule that is in conflict with such comments, or if the Secretary fails to adopt a regulation for which a State agency has made a petition in accordance with § 424.14, the Secretary shall provide such agency with a written justification for the failure to adopt a rule consistent with the agency's comments or petition.

[49 FR 38908, Oct. 1, 1984, as amended at 77 FR 25622, May 1, 2012]

### § 424.19 Final rules—impact analysis of critical habitat.

The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities. The Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned.

**§ 424.20 Emergency rules.**

(a) Sections 424.16, 424.17, 424.18, and 424.19 notwithstanding, the Secretary may at any time issue a regulation implementing any action described in § 424.10 in regard to any emergency posing a significant risk to the well-being of a species of fish, wildlife, or plant. Such rules shall, at the discretion of the Secretary, take effect immediately on publication in the FEDERAL REGISTER. In the case of any such action that applies to a resident species, the Secretary shall give actual notice of such regulation to the State agency in each State in which such species is believed to occur. Publication in the FEDERAL REGISTER of such an emergency rule shall provide detailed reasons why the rule is necessary. An emergency rule shall cease to have force and effect after 240 days unless the procedures described in §§ 424.16, 424.17, 424.18, and 424.19 (as appropriate) have been complied with during that period.

(b) If at any time after issuing an emergency rule, the Secretary determines, on the basis of the best scientific and commercial data available, that substantial evidence does not then exist to warrant such rule, it shall be withdrawn.

**§ 424.21 Periodic review.**

At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with §§ 424.11, 424.16, and 424.17 of this part, as appropriate. A notice announcing those species under active review will be published in the FEDERAL REGISTER. Notwithstanding this section's provisions, the Secretary may review the status of any species at any time based upon a petition (see § 424.14) or upon other data available to the Service.

**SUBCHAPTER B [RESERVED]**

## SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

### PART 450—GENERAL PROVISIONS

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

#### § 450.01 Definitions

The following definitions apply to terms used in this subchapter.

*Act* means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*

*Agency action* means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

*Alternative courses of action* means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisdiction.

*Benefits* means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

*Biological assessment* means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

*Biological opinion* means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

*Chairman* means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

*Committee* means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

*Critical habitat* refers to those areas listed as Critical Habitat in 50 CFR parts 17 and 226.

*Destruction or adverse modification* is defined at 50 CFR 402.02.

*Federal agency* means any department, agency or instrumentality of the United States.

*Irreversible or irretrievable commitment of resources* means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent al-

ternatives which would not violate section 7(a)(2) of the Act.

*Jeopardize the continued existence of* is defined at 50 CFR 402.02.

*Mitigation and enhancement measures* means measures, including live propagation, transplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

*Permit or license applicant* means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

*Person* means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

*Proposed action* means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

*Secretary* means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

*Service* means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

*To the extent that such information is available to the applicant* means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from

the appropriate Federal agency pursuant to a Freedom of Information Act request.

[50 FR 8126, Feb. 28, 1985]

## PART 451—APPLICATION PROCEDURE

Sec.

451.01 Definitions.

451.02 Applications for exemptions.

451.03 Endangered Species Committee.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

SOURCE: 50 FR 8127, Feb. 28, 1985, unless otherwise noted.

### § 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

### § 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, DC 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20030.

(c) *Who may apply.* (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary's opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may

be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent known.



(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(vii) A description of all alternatives considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.

(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A complete discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A complete statement explaining why the proposed action is in the public interest.

(v) A complete explanation of why the action is of regional or national significance.

(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted.

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) *Review of the application by the Secretary.* (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d) and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (e) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with part 452.

(g) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02.

(h) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the FEDERAL REGISTER (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Committee upon receipt of an application for exemption.

(i) The information collection requirements contained in part 451 do not

require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

#### **§ 451.03 Endangered Species Committee.**

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

### **PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY**

Sec.

- 452.01 Purpose and scope.
- 452.02 Definitions.
- 452.03 Threshold review and determinations.
- 452.04 Secretary's report.
- 452.05 Hearings.
- 452.06 Parties and intervenors.
- 452.07 Separation of functions and ex parte communications.
- 452.08 Submission of Secretary's report.
- 452.09 Consolidated and joint proceedings.

**AUTHORITY:** Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

**SOURCE:** 50 FR 8129, Feb. 28, 1985, unless otherwise noted.

## § 452.01

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### § 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

### § 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

### § 452.03 Threshold review and determinations.

(a) *Threshold determinations.* Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources; and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) *Burden of proof.* The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) *Negative finding.* If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary's denial shall constitute final agency action for purposes of judicial review under chapter 7 of title 5 of the United States Code.

(d) *Positive finding.* If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) *Secretary of State opinion.* The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

### § 452.04 Secretary's report.

(a) *Contents of the report.* If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) *Preparation of the report.* The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

### § 452.05 Hearings.

(a) *Hearings.* (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign

technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by § 451.02(e)(5). This information will be made part of the record.

(b) *Prehearing conferences.* (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider:

(i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents;

(ii) The limitation of the number of witnesses;

(iii) Questions of law which may bear upon the course of the hearings;

(iv) Prehearing motions, including motions for discovery; and

(v) Any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Hearings and prehearing conferences will be announced by a notice in the FEDERAL REGISTER stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) *Conduct of hearings—(1) Admissibility of evidence.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence

may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) *Applicant responsibility.* In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) *Open meetings and record.* All hearings and all hearing records shall be open to the public.

(g) *Requests for information, subpoenas.*

(1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

## § 452.06

(h) *Information collection.* The information collection requirements contained in § 452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

## § 452.06 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor's participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

## § 452.07 Separation of functions and ex parte communications.

(a) *Separation of functions.* (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex parte communications.* The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

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## § 452.08 Submission of Secretary's report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary's report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under § 452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

## § 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

## PART 453—ENDANGERED SPECIES COMMITTEE

Sec.

453.01 Purpose.

453.02 Definitions.

453.03 Committee review and final determinations.

453.04 Committee information gathering.

453.05 Committee meetings.

453.06 Additional Committee powers.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

SOURCE: 50 FR 8130, Feb. 28, 1985, unless otherwise noted.

## § 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

**§ 453.02 Definitions.**

Definitions applicable to this part are contained in 50 CFR 450.01.

**§ 453.03 Committee review and final determinations.**

(a) *Final determinations.* Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:

(1) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and,

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) *Decision and order.* The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the FEDERAL REGISTER as soon as practicable.

(c) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(1) Regardless of whether the species was identified in the biological assessment, and

(2) Only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if—

(i) The Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and

(ii) The Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) *Finding by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

**§ 453.04 Committee information gathering.**

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the FEDERAL REGISTER inviting written submissions from interested persons.

#### § 453.05

The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the FEDERAL REGISTER a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

#### § 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the

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existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the FEDERAL REGISTER. The notice will ordinarily be published at least 15 days prior to the meeting.

#### § 453.06 Additional Committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpoenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

## CHAPTER V—MARINE MAMMAL COMMISSION

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## PART 501—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

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501.2 Definitions.

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501.7 Agency review of requests for amendment or correction of a record.

501.8 Appeal of initial denial of a request for amendment or correction.

501.9 Fees.

AUTHORITY: Sec. 3, Privacy Act of 1974 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 49276, Oct. 21, 1975, unless otherwise noted.

### § 501.1 Purpose and scope.

(a) *Purpose.* The purpose of these rules is to fulfill the responsibilities of the Marine Mammal Commission (the "Commission") under section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(f) (the "Act") by establishing procedures whereby an individual will be notified if any system of records maintained by the Commission contains a record pertaining to him or her; by defining the times and places at which records will be made available and the identification requirements which must be met by any individual requesting access to them; by establishing procedures for disclosure to an individual, on request, of any record pertaining to him or her; and by establishing procedures for processing, reviewing, and making a final determination on requests of individuals to correct or amend a record pertaining to him or her, including a provision for administrative appeal of initial adverse determinations on such requests. These rules are promulgated with particular attention to the purposes and goals of the Act, and in accordance therewith provide for relative ease of access to records pertaining to an individual, and for maintenance by the Commission of only those records which are current, accurate, necessary, relevant and complete with respect to

the purposes for which they were collected.

(b) *Scope.* These rules apply only to "record" contained in "systems of records," defined by the Act as follows:

The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

The term "system of records" means of group of any record under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Notices with respect to the systems maintained by the Commission have been published in the FEDERAL REGISTER, as required by the Act. These rules pertain only to the systems of records disclosed in such notices, and to any systems that may become the subject of a notice at any time in the future.

(c) Nothing in these rules shall be construed as pertaining to requests made under the Freedom of Information Act, 5 U.S.C. 552.

### § 501.2 Definitions.

(a) As used in this part:

(1) The term *Act* means the Privacy Act of 1974, 5 U.S.C. 552a.

(2) The term *Commission* means the Marine Mammal Commission.

(3) The term *Director* means the Executive Director of the Marine Mammal Commission.

(4) The term *Privacy Officer* means an individual designated by the Director to receive all requests regarding the existence of records, requests for access and requests for correction or amendment; to review and make initial determinations regarding all such requests; and to provide assistance to any individual wishing to exercise his or her rights under the Act.

(b) Other terms shall be used in this part in accordance with the definitions contained in section 3 of the Privacy Act of 1974, 5 U.S.C. 552a(a).

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#### **§ 501.3 Procedure for responding to requests regarding the existence of records pertaining to an individual.**

Any individual may submit a request to be notified whether a system of records, with respect to which the Commission has published a notice in the FEDERAL REGISTER, contains a record pertaining to him or her. Requests may be made in writing to the Privacy Officer or by appearing in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006 between the hours of 9:00 a.m. and 5:00 p.m. on any working day. Systems of records that are the subject of a request should be identified by reference to the system name designated in the Notice of Systems of Records published in the FEDERAL REGISTER. In the event a system name is not known to the individual, a general request will suffice if it indicates reasons for the belief that a record pertaining to the named individual is maintained by the Commission. Receipt of inquiries submitted by mail will be acknowledged within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) unless a response can also be prepared and forwarded to the individual within that time.

#### **§ 501.4 Requests for access—times, places and requirements for identification of individuals.**

Requests for access to a system of records pertaining to any individual may be made by that individual by mail addressed to the Privacy Officer, or by submitting a written request in person at the Commission offices located at 1625 I Street, NW., Room 307, Washington, DC 20006, between the hours of 9 a.m. and 5 p.m. on any working day. Assistance in gaining access under this section, securing an amendment or correction under § 501.6, or preparing an appeal under §§ 501.5(d) and 501.8 shall be provided by the Privacy Officer on request directed to the Commission office. An individual appearing in person at the Commission offices will be granted immediate access to any records to which that individual is entitled under the Act upon satisfactory proof of identity by means of a document bearing the individual's pho-

tograph or signature. For requests made by mail, identification of the individual shall be adequate if established by means of submitting a certificate of a notary public, or equivalent officer empowered to administer oaths, substantially in accord with the following:

City of \_\_\_\_\_ County of \_\_\_\_\_  
: ss (Name of individual) who  
affixed (his) (her) signature below in my  
presence, came before me, a (Title), in the  
aforesaid County and State, this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_, and established  
(his)(her) identity to my satisfaction.  
My \_\_\_\_\_ Commission \_\_\_\_\_ expires \_\_\_\_\_.

The certificate shall not be required, however, for written requests pertaining to non-sensitive information or to information which would be required to be made available under the Freedom of Information Act. The Privacy Officer shall determine the adequacy of any proof of identity offered by an individual.

[41 FR 5, Jan. 2, 1976]

#### **§ 501.5 Disclosure of requested information.**

(a) Upon request and satisfactory proof of identity, an individual appearing at the Commission offices shall be given immediate access to and permission to review any record, contained in a system of records, pertaining to him or her, shall be allowed to have a person of his/her choosing accompany him/her, and shall be given a copy of all or any portion of the record. The individual to which access is granted shall be required to sign a written statement authorizing the presence of the person who accompanies him or her, and authorizing discussion of his or her record in the presence of the accompanying person.

(b) Requests made by mail to the Privacy Officer at the Commission offices will be acknowledged within 10 days from date of receipt (excluding Saturdays, Sundays, and legal public holidays). This acknowledgement shall advise the individual whether access to the record will be granted and, if access is granted, copies of such records shall be enclosed.

(c) If the Privacy Officer initially determines to deny access to all or any

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portion of a record, notice of denial shall be given to the individual in writing, within 30 days (excluding Saturdays, Sundays and holidays) after acknowledgement is given, and shall include the following:

(1) The precise record to which access is being denied;

(2) The reason for denial, including a citation to the appropriate provisions of the Act and of these Rules;

(3) A statement that the denial may be appealed to the Director;

(4) A statement of what steps must be taken to perfect an appeal to the Director; and,

(5) A statement that the individual has a right to judicial review under 5 U.S.C. 552a(g)(1) of any final denial issued by the Director.

(d) Administrative appeal of an initial denial, in whole or in part, of any request for access to a record, shall be available. An individual may appeal by submitting to the Director a written request for reconsideration stating therein specific reasons for reversal which address directly the reasons for denial stated in the initial notice of denial. If access is denied on appeal, a final notice of denial shall be sent to the individual within 30 days (excluding Saturdays, Sundays and holidays), and shall state with particularity the grounds for rejecting all reasons for reversal submitted by the individual. The denial shall then be deemed final for purposes of obtaining judicial review.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

### § 501.6 Requests for correction or amendment of a record.

(a) Any individual may request the correction or amendment of a record pertaining to him or her in writing addressed to the Privacy Officer at the Commission offices. Verification of identity required for such requests shall be the same as that specified in § 501.4 of this part with respect to requests for access. Records sought to be amended must be identified with as much specificity as is practicable under the circumstances of the request, and at a minimum, should refer to the system name designated in the Notice of System Records published in the FEDERAL REGISTER, the type of record

in which the information thought to be improperly maintained or incorrect is contained, and the precise information that is the subject of the request (for example, system name, description of record, paragraph, sentence, line, words). Assistance in identifying a record, and in otherwise preparing a request, may be obtained by contacting the Privacy Officer at the Commission offices.

(b) A request should, in addition to identifying the individual and the record sought to be amended or corrected, include:

(1) The specific wording or other information to be deleted, if any;

(2) The specific wording or other information to be inserted, if any, and the exact place in the record at which it is to be inserted, and,

(3) A statement of the basis for the requested amendment or correction (e.g. that the record is inaccurate, unnecessary, irrelevant, untimely, or incomplete), together with supporting documents, if any, which substantiate the statement.

### § 501.7 Agency review of requests for amendment or correction of a record.

(a) Where possible, each request for amendment or correction shall be reviewed, and a determination on the request made, by the Privacy Officer within 10 days of receipt (excluding Saturdays, Sundays and holidays). Requests shall be acknowledged within that period where insufficient information has been provided to enable action to be taken. An acknowledgement shall inform the individual making the request of the estimated time within which a disposition of the request is expected to be made, and shall prescribe such further information as may be necessary to process the request. The request shall be granted, or an initial decision to deny shall be made, within ten days of receipt of all information specified in the acknowledgement (excluding Saturdays, Sundays and holidays).

(b) Within 30 days (excluding Saturdays, Sundays and holidays) after arriving at a decision on a request, the Privacy Officer shall either:

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(1) Make the requested amendment or correction, in whole or in part, and advise the individual in writing of such action; or,

(2) Advise the individual in writing that the request has been initially denied, in whole or in part, stating, with respect to those portions denied;

(i) The date of the denial;

(ii) The reasons for the denial, including a citation to an appropriate section of the Act and these Rules; and,

(iii) The right of the individual to prosecute an appeal and to obtain judicial review should a final denial result from the appeal.

(c) In reviewing a request for amendment or correction of a record, the Privacy Officer shall consider the following criteria:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information sought to be amended or corrected;

(3) The relevance and necessity of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(4) The timeliness and currency of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(5) The completeness of the information sought to be amended or corrected in terms of the purposes for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual. If an amendment or correction is otherwise permissible under the Act and other relevant statutes, a request shall be denied only if the individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment or correction in light of these criteria.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

### § 501.8 Appeal of initial denial of a request for amendment or correction.

(a) The initial denial of a request for amendment or correction may be appealed by submitting to the Director the following appeal papers:

(1) A copy of the original request for amendment or correction;

(2) A copy of the initial denial; and

(3) A precise statement of the reasons for the individual's belief that the denial is in error, referring specifically to the criteria contained in § 501.7(c)(1) through (8).

The appeal must be signed by the individual. While these papers normally will constitute the entire Record on Appeal, the Director may add additional information, from sources other than the individual, where necessary to facilitate a final determination. Any such additional information added to the record shall promptly be disclosed to the individual to the greatest extent possible, and an opportunity for comment thereon shall be afforded prior to the final determination. Appeals should be submitted to the Director within 90 days after the date of the initial denial.

(b) The Director shall issue a final determination on appeal within thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date on which a completed Record on Appeal (including any additional information deemed necessary) is received. Review, and final determination by the Director, shall be based upon the criteria specified in § 501.7(c)(1) through (8).

(c) If the appeal is resolved favorably to the individual, the final determination shall specify the amendments or corrections to be made. Copies of the final determination shall be transmitted promptly to the individual and to the Privacy Officer. The Privacy Officer shall make the requested amendment or correction and advise the individual in writing of such action.

(d) If the appeal is denied, the final determination shall state, with particularity, the reasons for denial, including a citation to an appropriate section of the Act and of these Rules. The final determination shall be forwarded promptly to the individual, together with a notice which shall inform

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the individual of his or her right to submit to the Privacy Officer, for inclusion in the record, a concise statement of grounds for disagreement with the final determination. Receipt of any such statement shall be acknowledged by the Privacy Officer, and all subsequent and prior users of the record shall be provided copies of the statement. The notice shall also inform the individual of his or her right, under 5 U.S.C. 552a(g)(1), to obtain judicial review of the final determination.

[40 FR 49276, Oct. 21, 1975, as amended at 41 FR 5, Jan. 2, 1976]

### § 501.9 Fees.

A fee of \$0.10 shall be charged for each copy of each page of a record made, by photocopy or similar process, at the request of an individual. No fee shall be charged for copies made at the initiative of the Commission incident to granting access to a record. A total copying fee of \$2.00 or less may be waived by the Privacy Officer, but fees for all requests made contemporaneously by an individual shall be aggregated to determine the total fee.

[41 FR 5, Jan. 2, 1976]

## PART 510—IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Sec.

510.1 Purpose.

510.2 Scope.

510.3 Definitions.

510.4 Calling of meetings.

510.5 Notice of meetings.

510.6 Public participation.

510.7 Closed meetings.

510.8 Minutes.

510.9 Uniform pay guidelines.

AUTHORITY: Sec. 8(a), Federal Advisory Committee Act, 5 U.S.C. App. I.

SOURCE: 41 FR 3306, Jan. 22, 1976, unless otherwise noted.

### § 510.1 Purpose.

The regulations prescribed in this part set forth the administrative guidelines and management controls for advisory committees reporting to the Marine Mammal Commission. These regulations are authorized by section 8(a) of the Federal Advisory Committee Act, 5

U.S.C. appendix I. Guidelines and controls are prescribed for calling of meetings, notice of meetings, public participation, closing of meetings, keeping of minutes, and compensation of committee members, their staff and consultants.

### § 510.2 Scope.

These regulations shall apply to the operation of advisory committees reporting to the agency.

### § 510.3 Definitions.

For the purposes of this part,

(a) The term *Act* means the Federal Advisory Committee Act, 5 U.S.C. appendix I;

(b) The term *Chairperson* means each person selected to chair an advisory committee established by the Commission;

(c) The term *Commission* means the Marine Mammal Commission, established by 16 U.S.C. 1401(a);

(d) The term *committee* means any advisory committee reporting to the Commission; and

(e) The term *Designee* means the agency official designated by the Chairman of the Commission (1) to perform those functions specified by sections 10(e) and (f) of the Act, and (2) to perform such other responsibilities as are required by the Act and applicable regulations to be performed by the "agency head."

### § 510.4 Calling of meetings.

(a) No committee shall hold any meeting except with the advance approval of the Designee. Requests for approval may be made, and approval to hold meetings may be given orally or in writing, but if approval is given orally, the fact that approval has been given shall be stated in the public notice published pursuant to § 510.5 of these regulations.

(b) An agenda shall be submitted to, and must be approved by, the Designee in advance of each committee meeting, and that meeting shall be conducted in accordance with the approved agenda. The agenda shall list all matters to be considered at the meeting, and shall indicate when any part of the meeting will be closed to the public on the authority of exemptions contained in the

## **§510.5**

Freedom of Information Act, 5 U.S.C. 552(b).

[41 FR 3306, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

### **§510.5 Notice of meetings.**

(a) Notice of each committee meeting shall be timely published in the FEDERAL REGISTER. Publication shall be considered timely if made at least 15 days before the date of the meeting, except that shorter notice may be provided in emergency situations.

(b) The notice shall state the time, place, schedule and purposes of the committee meeting, and shall include, whenever it is available, a summary of the agenda. The notice shall indicate the approximate times at which any portion of the meeting will be closed to the public and shall include an explanation for the closing of any portion of the meeting pursuant to §510.7.

### **§510.6 Public participation.**

(a) All committee meetings, or portions of meetings, that are open to the public shall be held at a reasonable time and at a place that is reasonably accessible to the public. A meeting room shall be selected which, within the bounds of the resources and facilities available, affords space to accommodate all members of the public who reasonably could be expected to attend.

(b) Any member of the public shall be permitted to file a written statement with the committee, either by personally delivering a copy to the Chairperson, or by submitting the statement by mail to the Marine Mammal Commission Offices at the address indicated in the notice of meeting. Such statements should be received at least one week in advance of the scheduled meeting at which they are expected to be considered by the committee.

(c) Opportunities will ordinarily be afforded to interested persons to speak to agenda items during that portion of the open meeting during which that item is to be considered by the committee, subject to such reasonable time limits as the committee may establish, and consideration of the extent to which the committee has received the benefit of comments by interested persons, the complexity and the importance of the subject, the time con-

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straints under which the meeting is to be conducted, the number of persons who wish to speak during the meeting, and the extent to which the statement provides the committee with information which has not previously been available and is relevant to its decision or other action on that subject. Interested persons may be required to serve reasonable notice of their intentions to speak so that the committee may assess whether procedures and scheduling for the meeting can be adjusted to accommodate large numbers of participants.

### **§510.7 Closed meetings.**

(a) Whenever the committee seeks to have all or a portion of a meeting closed to the public on the basis of an exemption provided in 5 U.S.C. 552(b), the Chairperson shall notify the Designee at least 30 days before the scheduled date of the meeting. The notification shall be in writing and shall specify all the reasons for closing any part of the meeting.

(b) If, after consultation with the General Counsel of the Commission, the Designee finds the request to be warranted and in accordance with the policy of the Act, the request shall be granted. The determination of the Designee to grant any such request shall be in writing and shall state the specific reasons for closing all or a part of the meeting. Copies of the determination shall be made available to the public upon request.

### **§510.8 Minutes.**

Detailed minutes shall be kept of each portion of each committee meeting. The minutes shall include: the time and place of the meeting; a list of the committee members and staff in attendance; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the committee; a description of the extent to which the meeting was open to the public; and a description of public participation, including a list of members of the public who presented oral or written statements and an estimate of the number of members of the public who attended the open sessions. The Chairperson

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shall certify to the accuracy of the minutes.

### § 510.9 Uniform pay guidelines.

(a) Compensation of members and staff of, and consultants to the Committee of Scientific Advisors on Marine Mammals is fixed in accordance with 16 U.S.C. 1401(e), 1403(b), and 1406.

(b) Compensation for members and staff of, and consultants to all advisory committees reporting to the Commission except the Committee of Scientific Advisors on Marine Mammals shall be fixed in accordance with guidelines established by the Director of the Office of Management and Budget pursuant to section 7(d) of the Act, 5 U.S.C. appendix I.

## PART 520—PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.

520.1 Purpose.

520.2 Scope.

520.3 Definitions.

520.4 Availability of materials.

520.5 Administrative appeal.

520.6 Extensions of time.

520.7 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 41 FR 3307, Jan. 22, 1976, unless otherwise noted.

### § 520.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Commission, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Commission to recover direct search and duplication costs.

### § 520.2 Scope.

(a) These regulations shall apply to all final opinions, including concurring and dissenting opinions, as well as orders, made by the Commission in the adjudication of cases; to all statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER; to the Commission's admin-

istrative staff manuals and instructions to staff that affect a member of the public; and to any other Commission records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;



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(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

#### § 520.3 Definitions.

As used in these regulations:

(a) The term *Commission* means the Marine Mammal Commission;

(b) The term *Director* means the Executive Director of the Marine Mammal Commission;

(c) The term *exempt materials* means those materials described in § 520.2(b);

(d) The term *non-exempt materials* refers to all materials described in § 520.2(a), but not included in § 520.2(b); and

(e) The term *General Counsel* means the General Counsel of the Marine Mammal Commission.

#### § 520.4 Availability of materials.

(a) All non-exempt materials shall be available for inspection during normal business hours at the Commission offices, 1625 I Street, NW., Room 307, Washington, DC. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials.

(b) Requests to inspect, and obtain copies of, any material maintained by the Commission may be made in person at the Commission offices, or submitted in writing to the Executive Director, Marine Mammal Commission, 1625 I St., NW., Room 307, Washington, DC 20006. Each request should include a reasonable description of the material being sought, and should contain sufficient detail to facilitate retrieval of the material without undue delay. The Commission staff shall assist to the extent practicable in identifying material that is imprecisely described by the person requesting such material.

(c) An initial determination whether, and to what extent, to grant each request shall be made by the General Counsel or his delegate within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the

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request shall be notified immediately of the determination made. In making such determinations, it shall first be considered whether the material requested is of a type described in § 520.2(a); if it is, the request shall be granted unless the material is exempted by § 520.2(b). If the material requested is not of a type described in § 520.2(a), or is the subject of one or more exemptions, the request shall be denied.

(d) If a determination is made to grant a request, the relevant material shall promptly be made available for inspection at the Commission offices. Copies of the material disclosed shall be furnished within a reasonable time after payment of the fee specified in § 520.7. Copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request and payment of the fee. Larger numbers of copies may be furnished at the earliest convenience of the Commission staff, but must be furnished within a reasonable time following payment of the fee.

(e) Whenever required to prevent a clearly unwarranted invasion of personal privacy, the General Counsel or his delegate shall determine that identifying details shall be deleted from an opinion, statement of policy, interpretation, or staff manual or instruction to which access is granted or of which copies are furnished. Where portions of the requested material are exempt under § 520.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the material disclosed. Whenever details are deleted or portions are excised and not disclosed, the notification shall include the information specified in § 520.4(f).

(f) If a determination is made to deny a request, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 520.5, to appeal the denial to the Director.

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### § 520.5 Administrative appeal.

(a) An appeal to the Director of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests must state specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Director at the Commission offices.

(b) The Director shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Director, any material with which the reversal is concerned shall be made available for inspection, and copies shall be furnished, in accordance with § 520.4(d).

(d) If the denial is upheld, in whole or in part, the Director shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the names and positions of the persons responsible for the denial.

### § 520.6 Extensions of time.

(a) Whenever unusual circumstances exist, as set forth in § 520.6(b), the times within which determinations must be made by the General Counsel on requests for access (10 working days), and by the Director on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. The maximum extension of time allowed under this section shall be 10 working days, but shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" shall mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission offices;

(2) The need to search for, collect, and appropriately examine a volumi-

nous amount of separate and distinct records which are the subject of a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

### § 520.7 Fees.

(a) The following standard charges for document search and duplication, based on the direct costs of such services, must be paid before access to, or copies of material will be granted under these regulations:

(1) *Search*: \$4.00 per person-hour for clerical time; \$8.00 per person-hour for professional or supervisory time;

(2) *Duplication*: \$0.10 per page of photocopied material.

(b) The Commission shall furnish without charge, or at a reduced charge, copies of any material disclosed pursuant to these regulations, whenever the General Counsel or the Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

[41 FR 3307, Jan. 22, 1976; 41 FR 4020, Jan. 28, 1976]

## PART 530—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

530.1 Purpose.

530.2 Ensuring that environmental documents are actually considered in agency decision-making.

530.3 Typical classes of action.

530.4 Environmental information.

AUTHORITY: National Environmental Policy Act, Pub. L. 91-190; 42 U.S.C. 4321 *et seq.*

SOURCE: 44 FR 52837, Sept. 11, 1979, unless otherwise noted.

### § 530.1 Purpose.

The purpose of this part is to establish procedures which supplement the National Environmental Policy Act (NEPA) regulations and provide for the implementation of those provisions

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identified in § 1507.3(b) of the regulations which are applicable to the activities of the Commission in light of its statutory functions and responsibilities.

### **§ 530.2 Ensuring that environmental documents are actually considered in agency decision-making.**

Section 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, Commission officials shall:

(a) Consider all relevant environmental documents in evaluating proposals for agency actions;

(b) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes;

(c) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating any proposal for action by the Commission which is likely to significantly affect the quality of the human environment; and

(d) Where an environmental impact statement (EIS) has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS. All Commission officials directly involved in developing, evaluating, and/or reaching decisions on proposed actions shall consider relevant environmental documents and comply with the applicable provisions of the NEPA process.

### **§ 530.3 Typical classes of action.**

Section 1507.3(b)(2), in conjunction with § 1508.4, requires agencies to identify typical classes of action that warrant similar treatment under NEPA with respect to the preparation of EIS's or environmental assessments. As a general matter, the Commission's activities do not include actions for which EIS's or environmental assessments are required. Its activities involve:

(a) Consultation with and recommendations to other Federal agencies for actions relating to marine

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mammal protection and conservation for which an EIS or environmental assessment is either not required by the NEPA regulations or for which an EIS or environmental assessment is prepared by another Federal agency; and

(b) Research contracts relating to policy issues, biological-ecological data needed to make sound management decisions, and better methods for collecting and analyzing data. These activities are not, by themselves, major Federal actions significantly affecting the quality of the human environment and the Commission's activities are therefore categorically excluded from the requirement to prepare an EIS or environmental assessment except for proposals for legislation which are initiated by the Commission, for which the Commission shall develop environmental assessments or EIS's, as appropriate, in accordance with the NEPA regulations. The Commission shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

### **§ 530.4 Environmental information.**

Interested persons may contact the Office of the General Counsel for information regarding the Commission's compliance with NEPA.

## **PART 540—INFORMATION SECURITY**

Sec.

540.1 Policy.

540.2 Program.

540.3 Procedures.

AUTHORITY: Executive Order 12356.

### **§ 540.1 Policy.**

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12356 in matters relating to national security information.

[44 FR 55381, Sept. 26, 1979]

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### § 540.2 Program.

The Executive Director is designated as the Commission's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12356. The Executive Director also serves as the Commission's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12356, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12356 are acted upon within 60 days of receipt.

[44 FR 55381, Sept. 26, 1979]

### § 540.3 Procedures.

(a) *Mandatory declassification review.* All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Executive Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12356, unless the fact of its existence or non-existence would itself be classified under Executive Order 12356. Requests for declassification shall be acted upon promptly providing that the request reasonably describes the information which is the subject of the request for declassification. In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Executive Director will refer all requests for national security information in its custody to the Federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal

agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12356 and that agency's regulations and guidelines.

(b) *Exceptional cases.* When an employee or contractor of the Commission originates information that is believed to require classification, the Executive Director shall ensure that it is protected in accordance with Executive Order 12356 and shall promptly transmit it under appropriate safeguards to the agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency's regulations and guidelines.

(c) *Derivative classification.* Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12356, Section 2-1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate:

(1) The source of the original classification;

(2) The identity of the Commission employee originating the derivatively classified document;

(3) The dates or events for declassification or review for declassification indicated on the classified source material; and

(4) Any additional authorized markings appearing on the source material.

(d) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive

such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12356, its implementing directives, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) *Storage.* All classified documents shall be stored in the combination safe located in the Commission's offices. The combination shall be changed as required by ISOO Directive No. 1, dated June 23, 1982. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12356 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) *Agency terminology.* The use of the terms *Top Secret*, *Secret*, and *Confidential* shall be limited to materials classified for national security purposes.

[44 FR 55381, Sept. 26, 1979, as amended at 47 FR 55489, Dec. 10, 1982; 48 FR 44834, Sept. 30, 1983]

## PART 550—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY MARINE MAMMAL COMMISSION

### Sec.

- 550.101 Purpose.
- 550.102 Application.
- 550.103 Definitions.
- 550.104–550.109 [Reserved]
- 550.110 Self-evaluation.
- 550.111 Notice.
- 550.112–550.129 [Reserved]
- 550.130 General prohibitions against discrimination.
- 550.131–550.139 [Reserved]
- 550.140 Employment.
- 550.141–550.148 [Reserved]
- 550.149 Program accessibility: Discrimination prohibited.
- 550.150 Program accessibility: Existing facilities.
- 550.151 Program accessibility: New construction and alterations.
- 550.152–550.159 [Reserved]
- 550.160 Communications.
- 550.161–550.169 [Reserved]
- 550.170 Compliance procedures.
- 550.171–550.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4579, Feb. 5, 1986, unless otherwise noted.

### § 550.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 550.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 550.103 Definitions.

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking

skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and condi-

tions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

*Qualified handicapped person* means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 550.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as

amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

**§§ 550.104–550.109 [Reserved]**

**§ 550.110 Self-evaluation.**

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

**§ 550.111 Notice.**

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

**§§ 550.112–550.129 [Reserved]**

**§ 550.130 General prohibitions against discrimination.**

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of

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administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

### §§ 550.131–550.139 [Reserved]

### § 550.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

### §§ 550.141–550.148 [Reserved]

### § 550.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 550.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

### § 550.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 550.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section



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through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

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(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

### § 550.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

### §§ 550.152-550.159 [Reserved]

### § 550.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons

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with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 550.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

### §§ 550.161–550.169 [Reserved]

### § 550.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity

Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel for the Commission shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel for the Commission, Marine Mammal Commission, Room 307, 1625-I Street, NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 550.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant,

he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4579, Feb. 5, 1986, as amended at 51 FR 4579, Feb. 5, 1986]

§§ 550.171–550.999 [Reserved]

## PART 560—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

- 560.1 Purpose and scope.
- 560.2 Definitions.
- 560.3 Open meetings.
- 560.4 Notice of meetings.
- 560.5 Closed meetings.
- 560.6 Procedures for closing meetings.
- 560.7 Recordkeeping requirements.
- 560.8 Public availability of records.

AUTHORITY: 5 U.S.C. 552b(g).

SOURCE: 50 FR 2571, Jan. 17, 1985, unless otherwise noted.

### § 560.1 Purpose and scope.

This part contains the regulations of the Marine Mammal Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Marine Mammal Commission that the public is entitled to the fullest practicable information regarding its decision making processes. The provisions of this part set forth the basic responsibilities of the Commission with regard to this policy and offer guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of section 552b.

### § 560.2 Definitions.

For purposes of this part, the term—  
*Administrative Officer* means the Administrative Officer of the Marine Mammal Commission.

*Commission* means the Marine Mammal Commission, a collegial body established under 16 U.S.C. 1401 that functions as a unit and is composed of three individual members, each of whom is appointed by the President, by and with the advice and consent of the Senate.

*Commissioner* means an individual who is a member of the Marine Mammal Commission.

*Executive Director* means the Executive Director of the Marine Mammal Commission.

*General Counsel* means the General Counsel of the Marine Mammal Commission.

*Meeting* means the deliberations of at least a majority of the members of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include an individual Commissioner's consideration of official Commission business circulated in writing for disposition either by notation or by separate, sequential consideration, and deliberations on whether to:

(1) Hold a meeting with less than 7 days notice, as provided in § 560.4(d) of this part;

(2) Change the subject matter of a publicly announced meeting or the termination of the Commission to open or close a meeting or portions thereof to public observation, as provided in § 560.4(e) of this part;

(3) Change the time or place of an announced meeting, as provided in § 560.4(f) of this part;

(4) Close a meeting or portions of a meeting, as provided in § 560.5 of this part; or

(5) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 560.5 of this part.

*Public observation* means attendance by one or more members of the public at a meeting of the Commission, but does not include participation in the meeting.

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*Public participation* means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

### § 560.3 Open meetings.

(a) Except as otherwise provided in this part, every portion of every meeting of the Commission shall be open to public observation.

(b) Meetings of the Commission, or portions thereof, shall be open to public participation only when an announcement to that effect is issued under § 560.4(b)(4) of this part. Public participation shall be conducted in an orderly, nondisruptive manner and in accordance with such procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(c) When holding open meetings, the Commission shall make a diligent effort to provide ample space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting.

(d) Members of the public may record open meetings of the Commission by means of any mechanical or electronic device, unless the chairperson of the meeting determines that such recording would disrupt the orderly conduct of the meeting.

### § 560.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least 7 days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions thereof closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Submitting the announcement for publication in the FEDERAL REGISTER;

(2) Distributing the announcement to affected governmental entities;

(3) Mailing the announcement to persons and organizations known to have an interest in the subject matter of the meeting; and

(4) Other means that the Executive Director deems appropriate to inform interested parties.

(d) A meeting may be held with less than 7 days notice if a majority of the members of the Commission determine by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(e) The subject matter of an announced meeting, or the determination of the Commission to open or close a meeting or portions thereof to public observation, may be changed if a majority of the members of the Commission determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible. The Commission shall make a public announcement of the changes made and the vote of each member on each change at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

(f) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraph (c) of this section that are practicable given the available period of time.

### § 560.5 Closed meetings.

(a) A meeting or portions thereof may be closed, and information pertaining to such meeting or portions

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thereof may be withheld from the public, only if the Commission determines that such meeting or portions thereof, or the disclosure of such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to that Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve either accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose either investigatory records compiled for law enforcement purposes or information which if written would be contained in such records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to either a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence inves-

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tigation, confidential information furnished only by the confidential source or sources,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission. This exception shall not apply in any instance where the Commission has already disclosed to the public the content or nature of the proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Commission, or the participation of the Commission in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting or portions thereof may be closed to public observation, the Commission shall determine, notwithstanding the exemptions set forth in paragraph (a) of this section, whether or not the public interest requires that the meeting or portions thereof be open. The Commission may open a meeting or portions thereof that could be closed under paragraph (a) of this section if the Commission finds it to be in the public interest to do so.

### § 560.6 Procedures for closing meetings.

(a) A meeting or portions thereof may be closed and information pertaining to such meeting or portions thereof may be withheld under § 560.5 of this part only when a majority of the members of the Commission vote to take such action.

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(b) A separate vote of the members of the Commission shall be taken with respect to each meeting or portion thereof proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed, so long as each meeting or portion thereof in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in §560.5(a) (5), (6) or (7) of this part. Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion thereof.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemptive provision from §560.5(a) of this part.

(e) Within one day of a vote taken pursuant to this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing together with a list of all persons expected to attend the meeting and their affiliation.

### §560.7 Recordkeeping requirements.

(a) Except as otherwise provided in this section, the Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting, whether opened or closed.

(b) In the case of either a meeting or portions of a meeting closed to the

public pursuant to §560.5(a) (8) or (10) of this part, the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

### §560.8 Public availability of records.

(a) The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information which may be withheld under §560.5 of this part.

(b) The transcript, electronic recordings or minutes of a meeting shall be made available for public review as soon as practicable after each meeting at the Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.

(c) Copies of the transcript, a transcription of the electronic recording, or the minutes of a meeting shall be furnished at cost to any person upon written request. Written requests should be addressed to the Administrative Officer, Marine Mammal Commission, 1625 I Street NW., Washington, DC 20006.



## FINDING AIDS

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