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Queen snapper, *Etelis oculatus*
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[64 FR 29135, May 28, 1999, as amended at 71 FR 58174, Oct. 2, 2006; 75 FR 30528, June 1, 2010; 76 FR 70066, Nov. 10, 2011; 78 FR 40349, July 3, 2013; 80 FR 50102, Aug. 18, 2015; 80 FR 73146, Nov. 24, 2015]

PART 644 [RESERVED]

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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FIGURE 1 TO PART 648

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

SOURCE: 61 FR 34968, July 3, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 648 appear at 62 FR 14651, Mar. 27, 1997.

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surfclam and ocean quahog fisheries (Atlantic Surfclam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the golden and blueline tilefish fisheries (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

(b) This part governs domestic fishing only. Foreign fishing is governed under subpart F of part 600 of this chapter.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43424, Aug. 23, 1996; 62 FR 13299, Mar. 20, 1997; 65 FR 1568, Jan. 11, 2000; 65 FR 77464, Dec. 11, 2000; 66 FR 49192, Sept. 26, 2001; 67 FR 63229, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003; 76 FR 60649, Sept. 29, 2011; 82 FR 52855, Nov. 15, 2017]

§ 648.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this part have the following meanings:

Alewife means *Alosa pseudoharengus*.

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

American shad means *Alosa sapidissima*.

Annual catch entitlement (ACE), with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

At-sea monitor, with respect to the NE multispecies fishery, means any person responsible for observing, verifying, and reporting area fished, catch, and discards of all species by gear type for sector trips as part of an approved sector at-sea monitoring program.

Atlantic butterfish or *butterfish* means *Peprilus triacanthus*.

Atlantic chub mackerel means *Scomber colias*.

Atlantic croaker means *Micropogonias undulatus*.

Atlantic deep-sea red crab (red crab) means *Chaceon quinquedens*.

Atlantic hagfish means *Myxine glutinosa*.

Atlantic herring means *Clupea harengus*.

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel or has declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait;

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port; or

(3) Any person owning or operating an Atlantic herring carrier that sells Atlantic herring received at sea or in port from a vessel issued a Federal Atlantic herring permit.

Atlantic herring offload means to remove, begin to remove, to pass over the rail, or otherwise take Atlantic herring off of or away from any vessel issued an Atlantic herring permit for sale to either a permitted at-sea Atlantic herring dealer or a permitted land-based Atlantic herring dealer.

Atlantic herring processor means a person who receives unprocessed Atlantic herring from a fishing vessel issued a Federal Atlantic herring permit or from an Atlantic herring dealer for the purposes of processing; or the owner or operator of a fishing vessel that processes Atlantic herring; or an Atlantic herring dealer who purchases Atlantic herring from a fishing vessel with a Federal Atlantic herring permit for resale as bait.

Atlantic herring transfer at-sea means a transfer from the hold, deck, codend, or purse seine of a vessel issued an Atlantic herring permit to another vessel for personal use as bait, to an Atlantic herring carrier or at-sea processor, to a permitted transshipment vessel, or to another permitted Atlantic herring vessel. Transfers between vessels engaged in pair trawling are not herring transfers at-sea.

Atlantic mackerel or *mackerel* means *Scomber scombrus*.

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

Atlantic salmon means *Salmo salar*.

Atlantic sea scallop or *scallop* means *Placopecten magellanicus*, throughout its range.

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

Black sea bass means *Centropristis striata*.

Black Sea Bass Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, and Commission representatives. The Council Executive Director or his designee chairs the Committee.

Black sea bass pot or black sea bass trap means any such gear used in catching and retaining black sea bass.

Blowfish (puffer) means any species in the family Tetraodontidae.

Blueback herring means *Alosa aestivalis*.

Bluefish means *Pomotomus saltatrix*.

Bluefish Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

Blueline tilefish means *Caulolatilus microps*.

Bonito means *Sarda sarda*.

Border transfer (BT) means the amount of herring specified pursuant to § 648.200 that may be transferred to a Canadian transport vessel that is permitted under the provisions of Pub. L. 104–297, section 105(e).

Bottom-tending mobile gear, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

Bridles connect the wings of a bottom trawl to the ground cables. The ground cables lead to the doors or otter boards. The doors are attached to the towing vessel via steel cables, referred to as wires or warps. Each net has two sets of bridles, one on each side.

Brush-sweep trawl gear means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft^3 (35.24 L) of in-shell Atlantic sea scallops.

Cage means a container with a standard unit of volumetric measurement containing 60 ft^3 (1,700 L). The outside dimensions of a standard cage generally are 3 ft (91 cm) wide, 4 ft (122 cm) long, and 5 ft (152 cm) high.

Calendar day, with respect to the squid and butterfish fisheries, means the 24-hr period beginning at 0001 hours and ending at 2400 hours,

Chafing gear or *cookies*, with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

Charter or *party boat* means any vessel that carries passengers for hire to engage in recreational fishing and, with respect to multispecies, that is not fishing under a DAS.

Circle hook, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of individual DAS under the NE Multispecies FMP and has applied for or been issued a limited access scallop permit.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Commission means the Atlantic States Marine Fisheries Commission.

Common pool trip, with respect to the NE multispecies fishery, means any trip taken by a common pool vessel under a NE multispecies DAS or under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit that lands regulated species or ocean pout.

Common pool vessel, with respect to the NE multispecies fishery, means any vessel issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit that is not a member of an approved sector for a particular fishing year and that is not operating under the provisions of an approved sector operations plan.

Such vessels must use a NE multispecies DAS, or be fishing under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit, to land regulated species or ocean pout, and must comply with effort controls, trip limits, gear restricted areas, and other provisions specified in this part. Vessels fishing under the provisions of the common pool are also referred to as non-sector vessels.

Conger eel means *Conger oceanicus*.

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surfclam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

Councils with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

Cunner means *Tautogolabrus adspersus*.

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), and the Atlantic sea scallop fishery, means the 24-hr period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses or lands, regulated species, monkfish, or scallops.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

Dealer code means a confidential five-digit number assigned to each dealer required to submit purchases using the IVR system for the purpose of maintaining the integrity of the data reported through the IVR system.

De-hooker, with respect to the NE multispecies hook gear fishery, means the fairlead rollers when used in a manner that extracts fish hooks from caught fish, also known as ''crucifiers.''

Directed fishery, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means commercial fishery operations in which more than an incidental catch of each species, as defined in this section, is retained by a vessel.

Dockside/roving monitor, with respect to the NE multispecies fishery, means any person responsible for observing/verifying the offloads of all species by common pool or sector vessels either directly to a federally permitted dealer or to a truck for later delivery to a federally permitted dealer, and for certifying the accuracy of landed weights, as reported by federally permitted dealers, pursuant to this part.

Dredge or *dredge gear*, with respect to the scallop fishery, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

Dredge bottom, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would

be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as ''diamonds.''

Dredge top, with respect to the scallop fishery, means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick, and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel, with respect to the scallop fishery, means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching scallops.

Electronic monitoring, with respect to the NE multispecies fishery, means any equipment that is used to monitor area fished and the amount and identity of species kept and discarded in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program.

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies, and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate as defined under this part), and surfclam and ocean quahog dredges.

Fishing circle, with respect to the NE multispecies limited access fishery, means the calculated circumference of a bottom trawl based on the number of meshes and stretched mesh length at the narrow, aft end of the square of the net.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year.

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through March 31 of the following year (for 2017, the Atlantic sea scallop fishing year will be from March 1, 2017, through March 31, 2018).

(3) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(4) For the golden tilefish fishery, from November 1 through October 31 of the following year.

(5) For all other fisheries in this part, from January 1 through December 31.

Fixed gear, for the purposes of the Atlantic herring fishery, means weirs or stop seines.

Flatfish gillnets means gillnets that are either constructed with no floats on the float line, or that are constructed with floats on the float line and that have tie-down twine between the float line and the lead line not more than 48 inches (18.90 cm) in length and spaced not more than 15 feet (4.57 m) apart.

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus*.

Full-processing (fully process or fully processed), with respect to the Atlantic deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

Gillnet gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at § 648.81(b)(2)(ii) and (d)(5)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

Golden tilefish means *Lopholatilus chamaeleonticeps*.

Gross registered tonnage (GRT) means the gross registered tonnage specified on the USCG documentation for a vessel.

Ground cables on a bottom trawl run between the bridles, which attach directly to the wings of the net, and the doors, or otter boards. The doors are attached to the towing vessel via steel cables, referred to as wires or warps.

Hagfish means *Myxine glutinosa*.

Hail Weight means a good-faith estimate in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded for each trip.

Handgear, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

Handline or *handline gear* means fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

Harbor porpoise means *Phocoena phocoena*.

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the NEFMC to review, analyze, and propose harbor porpoise take mitigation alternatives.

Hickory shad means *Alosa mediocris*.

Hook gear means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

Illex means *Illex illecebrosus* (short-finned or summer squid).

Incidental catch, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means less than 250 lb (113 kg) of longfin squid, 10,000 lb (4,536 kg) of *Illex* squid, or 600 lb (272 kg) of butterfish retained on board the vessel.

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

Individual Transferable Quota (ITQ) Program means, for the Atlantic surfclam and ocean quahog fishery, the annual individual allocation of quota specified at § 648.74.

Inshore exempted species means the following species:

Bay scallop—*Aequipecten irradians*.
Blood arc clam—*Anadara ovalis*.
Blood worm—*Glycera dibranchiata*.
Blue crab—*Callinectes similis* and *Callinectes sapidus*.
Blue mussel—*Mytilus edulis*.
Green crab—*Carcinus maenas*.
Hermit crab—*Clibanarius vittatus*, *Pagurus pollicaris* and *Pagurus longicarpus*.
Japanese shore crab—*Hemigrapsus sanguineus*.
Oyster—*Crassostrea virginica* and *Ostrea edulis*.
Quahog—*Mercenaria mercenaria*.
Razor clam—*Ensis directus*.
Sand worm—*Neresis virens*.
Soft clam—*Mya arenaria*.
Spider crab*Libinia emarginata*.

Interest in an IFQ allocation means: An allocation of quota share or annual IFQ allocation held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

IVR System means the Interactive Voice Response reporting system established by the Regional Administrator for the purpose of monitoring harvest levels for certain species.

Jigging, with respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

John Dory means *Zenopsis conchifera*.

JVPt, with respect to the Atlantic herring fishery, means the specification of the total amount of herring available for joint venture processing by foreign vessels in the EEZ and state waters.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Lessee means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) A person or entity eligible to hold golden tilefish IFQ allocation, who receives temporarily transferred golden tilefish IFQ allocation, as specified at § 648.294(e)(1).

Lessor means:

(1) A vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) An IFQ allocation permit holder who temporarily transfers golden tilefish IFQ allocation, as specified at § 648.294(e)(1).

Limited access general category (LAGC) scallop vessel means a vessel that has been issued an individual fishing quota

(IFQ), Northern Gulf of Maine (NGOM), or incidental catch LAGC scallop permit pursuant to § 648.4(a)(2)(ii). An LAGC scallop vessel may also be issued a limited access scallop permit.

Limited access herring vessel means a vessel that has been issued a valid permit for any type of limited access herring vessel permit described in § 648.4.

Limited access scallop vessel means a vessel that has been issued a limited access full-time, part-time, or occasional scallop permit pursuant to § 648.4(a)(2)(i). A limited access scallop vessel may also be issued an LAGC scallop permit.

Liner means a piece of mesh or any other material rigged inside or outside the main or outer net or dredge that restricts the mesh or ring size or otherwise reduces escapement.

Link, with respect to the sea scallop fishery, means the material, usually made of a ⅜-inch (10-mm) or 7⁄16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

Little tunny means *Euthynnus alleteratus*.

Longfin squid means *Doryteuthis (Amerigo) pealeii* (formerly *Loligo pealeii*).

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

Mahogany Quahog see *Ocean Quahog*

Maine bushel means a standard unit of volumetric measurement equal to 1.2445 cubic feet (35.24 L) of ocean quahogs in the shell.

Maine mahogany quahog zone means the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43°50′ N. latitude, and on the north and west by the shoreline of Maine.

MCSP means a Mobile Communications Service Provider, which is an operator of a mobile communications service used to provide wireless connectivity between mobile platforms and fixed platforms, and enables location transmission and two-way message exchange between the vessel and NMFS, when using a compatible MTU.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

Mid-Atlantic forage species means the following species and species groups:

(1) Anchovies (family Engraulidae), including but not limited to the following species:

(i) Striped anchovy-*Anchoa hepsetus*.

(ii) Dusky anchovy-*Anchoa lyolepis*.

(iii) Bay anchovy-*Anchoa mitchilli*.

(iv) Silver anchovy-*Engraulis eurystole*.

(2) Argentines (family Argentinidae), including but not limited to the following species:

(i) Striated argentine-*Argentina striata*.

(ii) Pygmy argentine-*Glossanodon pygmaeus*.

(3) Greeneyes (family Chlorophthalmidae), including but not limited to the following species:

(i) Shortnose greeneye-*Chlorophthalmus agassizi*.

(ii) Longnose greeneye-*Parasudis truculenta*.

(4) Halfbeaks (family Hemiramphidae), including but not limited to the following species:

(i) Flying halfbeak-*Euleptorhamphus velox*.

(ii) Balao-*Hemiramphus balao*.

(iii) Ballyhoo-*Hemiramphus brasiliensis*.

(iv) False silverstripe halfbeak/American halfbeak/Meek's halfbeak-*Hyporhamphus meeki*.

(5) Herrings and Sardines (family Clupeidae). With the exception of other herring and sardine species managed under this part, including American shad, Atlantic herring, blueback herring, hickory shad, and river herring/alewife, as defined in this section, the following herring and sardine species are Mid-Atlantic forage species:

(i) Round herring-*Etrumeus teres*.

(ii) Scaled sardine-*Harengula jaguana*.

(iii) Atlantic thread herring-*Opisthonema oglinum*.

(iv) Spanish sardine-*Sardinella aurita*.

(6) Lanternfishes (family Myctophidae), including but not limited to the following species:

(i) Horned lanternfish-*Ceratoscopelus maderensis*.

(ii) Dumril's headlightfish-*Diaphus dumerilii*.

(iii) Crocodile lanternfish-*Lampanyctus crocodilus*.

(iv) Doflein's false headlightfish-*Lobianchia dofleini*.

(v) Spotted lanternfish-*Myctophum punctatum*.

(7) Pearlsides (family Sternoptychidae), including but not limited to the following species:

(i) Atlantic silver hatchetfish-*Argyropelecus aculeatus*.

(ii) Muller's pearlside-*Maurolicus muelleri*.

(iii) Weizman's pearlside-*Maurolicus weitzmani*.

(iv) Slope hatchetfish-*Polyipnus clarus*.

(8) Sand lances (family Ammodytidae), including but not limited to the following species:

(i) American/inshore sand lance-*Ammodytes americanus*.

(ii) Northern/offshore sand lance-*Ammodytes dubius*.

(9) Silversides (family Atherinopsidae), including but not limited to the following species:

(i) Rough silverside-*Membras martinica*.

(ii) Inland silverside-*Menidia beryllina*.

(iii) Atlantic silverside-*Menidia menidia*.

(10) Cusk-eels (order Ophidiiformes), including but not limited to the following species:

(i) Chain pearlfish-*Echiodon dawsoni*.

(ii) Fawn cusk-eel-*Lepophidium profundorum*.

(iii) Striped cusk-eel-*Ophidion marginatum*.

(11) Atlantic saury-*Scomberesox saurus*.

(12) Pelagic mollusks and cephalopods, excluding sharptail shortfin squid (*Illex oxygonius*), but including the following pelagic mollusc species:

(i) Neon flying squid-*Ommastrephes bartramii*.

(ii) European flying squid-*Todarodes sagittatus*.

(iii) Atlantic brief squid-*Lolliguncula brevis*.

(iv) Bobtail squids (family Sepiolidae), including but not limited to the following species:

(A) Odd bobtail squid-*Heteroteuthis dispar*.

(B) Big fin bobtail squid-*Rossia megaptera*.

(C) Warty bobtail squid-*Rossia palpebrosa*.

(D) Lesser bobtail squid-*Semirossia tenera*.

(E) Butterfly bobtail squid-*Stoloteuthis leucoptera*.

(v) Sea angels and sea butterflies (orders Gymnosomata and Thecosomata).

(vi) Tuberculate pelagic octopus-*Ocythoe tuberculata*.

(13) Species under one inch as adults, including but not limited to the following species groups:

(i) Copepods (subclass Copepoda).

(ii) Krill (order Euphausiacea).

(iii) Amphipods (order Amphipoda).

(iv) Ostracods (class Ostracoda).

(v) Isopods (order Isopoda).

(vi) Mysid shrimp (order Mysidacea).

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

Monkfish, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

Monkfish gillnets means gillnet gear with mesh size no smaller than 10–inches (25.4 cm) diamond mesh that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic

States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

Monkfish-only DAS means monkfish DAS allocated to a limited access monkfish Category C, D, F, G, or H permit that are in excess of that permit's initial allocation of Northeast multispecies Category A DAS at the beginning of a fishing year.

MTU means a Mobile Transmitting Unit, which is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard installed on a fishing vessel participating in the VMS program.

Mullet means any species in the family Mugilidae.

Multispecies frames, also known as multispecies racks, means the remains of the multispecies finfish after it has been filleted or processed, not including the fillet.

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC to review, analyze, and recommend adjustments to the measurement measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Region Office, NEFSC, the USCG, an industry representative, and no more than two representatives, appointed by the Commission, from affected states.

NAFO means Northwest Atlantic Fisheries Organization.

NAFO Convention Area means the waters of the Northwest Atlantic Ocean north of 35°00′ N. lat. and west of a line extending due north from 35°00′ N. lat. and 42°00′ W. long. to 59°00′ N. lat., thence due west to 44°00′ W. long., and thence due north to the coast of Greenland and the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78°10′ N. lat.

NAFO Regulatory Area means the part of the NAFO Convention Area which lies beyond the 200–mile zone of the coastal states.

NEFSC means the Northeast Fisheries Science Center, NMFS.

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

Net tonnage (NT) means the net tonnage specified on the USCG documentation for a vessel.

Non-exempt gillnet fishery means a fishery which uses gillnet gear capable of catching multispecies.

Non-exempt species means species of fish not included under the GOM, GB and SNE Regulated Mesh Area exempted fisheries, as specified in § 648.80(a)(5); (a)(6); (a)(9) through (14); (b)(3)(i) and (ii); (b)(5) through (8); and (d), (e), (h), and (i).

Northeast (NE) multispecies or multispecies means the following species:

American plaice—*Hippoglossoides platessoides*.
Atlantic cod—*Gadus morhua*.
Atlantic halibut—*Hippoglossus hippoglossus*.
Atlantic wolffish—*Anarhichas lupus*.
Haddock—*Melanogrammus aeglefinus*.
Ocean pout—*Macrozoarces americanus*.
Offshore hake—*Merluccius albidus*.
Pollock—*Pollachius virens*.
Redfish—*Sebastes fasciatus*.
Red hake—*Urophycis chuss*.
Silver hake (whiting)—*Merluccius bilinearis*.
White hake—*Urophycis tenuis*.
Windowpane flounder—*Scophthalmus aquosus*.
Winter flounder—*Pleuronectes americanus*.
Witch flounder—*Glyptocephalus cynoglossus*.
Yellowtail flounder—*Pleuronectes ferruginea*.

Northern shrimp means *Pandalus borealis*.

Not available for immediate use means that the gear is not being used for fishing and is stowed in conformance with one of the following methods:

(1) *Nets*—(i) *Below-deck stowage*. (A) The net is stored below the main working deck from which it is deployed and retrieved;

(B) The net is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage*. (A) The net is fan-folded (flaked) and bound around its circumference;

(B) The net is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage*. (A) The net is on the net reel;

(B) The codend of the net is removed from the net and stored below deck; and

(C) The entire surface of the net is covered and securely bound by:

(*1*) Canvas of other similar opaque material; or

(*2*) A highly visible orange or yellow mesh material that is not capable of catching fish or being utilized as fishing gear. An example of highly visible orange or yellow mesh includes but is not limited to the orange fence material commonly used to enclose construction sites.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas and the Georges Bank Seasonal Closure Area.* (A) If a vessel is transiting the *Gulf of Maine Rolling Closure Areas and the Georges Bank Seasonal Closure Area*, not available for immediate use also means, the net is on the net reel;

(B) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend;

(C) The entire surface of the net is covered and securely bound by:

(*1*) Canvas of other similar opaque material; or

(*2*) A highly visible orange or yellow mesh material that is not capable of catching fish or being utilized as fishing gear. Highly visible orange or yellow mesh includes but is not limited to the orange fence material commonly used to enclose construction sites.

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured, and the dredge or the winch is covered so that it is rendered unusable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, are covered.

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

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

Observer/sea sampler means any person certified/approved by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program and Northeast At-sea Monitoring Program. Observer/sea samplers are also referred to as fisheries observers, fisheries observers/sea samplers, and NMFS-certified fisheries observers/sea samplers.

Ocean quahog means the species *Arctica islandica*.

Offload or *offloading* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel. For purposes of the surfclam and ocean quahog fishery, it means to separate physically a cage from a vessel, such as by removing the sling or wire used to remove the cage from the harvesting vessel.

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Rotational Areas specified in §§ 648.59 and 648.60, the Northern Gulf of Maine Management Area specified in § 648.62, EFH Closed Areas specified in §§ 648.61 and 648.370, Dedicated Habitat Research areas specified in § 648.371, or the Frank R. Lautenberg Deep-Sea Coral Protection Area described in § 648.372.

Operational discards in the Atlantic herring fishery means small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or

seine at the end of pumping operations is operationally discarding catch.

Operator means the master, captain, or other individual on board a fishing vessel, who is in charge of that vessel's operations.

Out of the monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

Out of the multispecies fishery means the period of time during which a vessel is not fishing for regulated species under the NE multispecies DAS program.

Ownership interest, in the NE multispecies fishery, includes, but is not limited to holding share(s) or stock in any corporation, any partnership interest, or membership in a limited liability company, or personal ownership, in whole or in part, of a vessel issued a limited access NE multispecies permit or confirmation of permit history (CPH), including any ownership interest in any entity or its subsidiaries or partners, no matter how far removed.

Pair trawl or pair trawling means to tow a single net between two vessels.

Parlor trap/pot means any structure or other device, other than a net, with more than one compartment inside designed to impede escape of lobsters or crabs from the device or structure, which is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

Pelagic hook and line gear means handline or rod and reel gear that is designed to fish for, or that is being used to fish for, pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Pelagic longline gear means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

Permit year means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year;

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through the last day of March of the following year (for 2017, the Atlantic sea scallop permit year will be from March 1, 2017, through March 31, 2018);

(3) For all other fisheries in this part, from May 1 through April 30 of the following year.

Personal use, with respect to the surfclam or ocean quahog fishery, means harvest of surfclams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

Person who receives bluefish for commercial purposes means any person (excluding representatives of governmental agencies) engaged in the sale, barter, or trade of bluefish received from a fisherman, or one who transports bluefish from a fisherman.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Potential Sector contribution (PSC), with respect to the NE multispecies fishery, means an individual vessel's share of the ACL for each stock of regulated species or ocean pout that is derived from the fishing history associated with the permit issued to that particular vessel for the purposes of participating in a sector and contributing to that sector's ACE for each stock allocated to sectors under the NE Multispecies FMP.

Prior to leaving port, with respect to the call-in notification system for NE multispecies, and the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category C, D, F, G, or H permit provisions that are also fishing under a NE multispecies DAS, means no more than 1 hour prior to the time a vessel leaves the last dock or mooring in port from which that vessel departs to engage in fishing, including the transport of fish to another port. With respect to the call-in notification system for monkfish vessels that are fishing under the limited access monkfish Category A or B permit provisions, it means prior to the last dock or mooring in port from which a vessel

departs to engage in fishing, including the transport of fish to another port.

Private recreational fishing vessel, with respect to the NE multispecies fishery, means a vessel engaged in recreational fishing that has not been issued a Federal NE multispecies permit, does not sell fish, and does not take passengers for hire.

Processing, or to process, with respect to the Atlantic herring fishery, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

Processor, with respect to the Atlantic surfclam and ocean quahog fisheries, means a person who receives surfclams or ocean quahogs for a commercial purpose and removes them from a cage.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Quota-managed species means any species of finfish managed under this part by an annual or seasonal quota, by annual target or actual TAC, or by DAH limits.

Records, with respect to records required to be kept by § 648.7, means those that include, but are not limited to, any written, recorded, graphic, electronic, or digital material; as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weighout slips; preliminary, interim, and final tally sheets; tags; notes; logbooks; statements; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

Red Crab Management Unit means an area of the Atlantic Ocean from 35° 15.3′ N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught, or retained in or from such area.

Red crab trap/pot means any structure or other device, other than a net or parlor trap/pot, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

Red crab trip, with respect to the Atlantic deep-sea red crab fishery, means a trip on which a vessel fishes for, possesses, or lands, or intends to fish for, possess, or land red crab in excess of the incidental limit, as specified at § 648.263(b)(1).

Regional Administrator means the Administrator, Northeast Region, NMFS, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson-Stevens Act.

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, white hake, Atlantic halibut, and Atlantic wolffish. Regulated species is also referred to as regulated NE multispecies.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited

hooks and gangions are not considered to be rigged.

River herring means alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*).

Rockhopper and roller gear means trawl gear configured with disks, rollers, or other similar shaped devices that are attached to the bottom belly of the trawl, contact the sea bottom, and that are designed to raise the bottom panel of the trawl off the ocean bottom so as to enable the gear to be fished on hard bottom.

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

Roundfish gillnets means gillnets that are constructed with floats on the float line and that have no tie-down twine between the float line and the lead line.

Runaround gillnet or encircling gillnet means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than ¼ the length of the net or with an opening greater than ¼ the length of the net, if the opening is obstructed in any fashion.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use scallop dredge gear.

Scup means *Stenotomus chrysops*.

Scup Monitoring Committee means a committee made up of staff representative of the MAFMC, NEFMC, South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NEFSC, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Scup pot or trap means a pot or trap used in catching and retaining scup.

Sea Scallop Access Area, Scallop Access Area, or *Access Area*, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as a sea scallop rotational area that is open to the scallop fishery in a given fishing year.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the NEFMC.

Sea Scallop Rotational Area, Scallop Rotational Area, or *Rotational Area*, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as part of the Sea Scallop Rotational Management Program. A rotational area may be closed or open to the scallop fishery in a given fishing year. A rotational area open to the scallop fishery is termed a Sea Scallop Access Area and has area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the area. Such measures are not applicable as defined in § 648.2 in the definition to Open Areas.

Sea raven means *Hemitripterus americanus*.

Searobin means any species of the family Triglidae.

Sector, with respect to the NE multispecies fishery, means a group of persons holding limited access NE multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and that have been allocated a portion of the TACs of species managed under the NE Multispecies FMP to achieve objectives consistent with the applicable goals and objectives of the FMP. Each sector must meet the sector eligibility and minimum size requirements specified in § 648.87(a)(3) and (4) to be approved by NMFS.

Sector trip, with respect to the NE multispecies fishery, means any trip taken by a sector vessel subject to the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), in which the vessel declared its intent to fish in the NE multispecies fishery pursuant to § 648.10.

Sector vessel, with respect to the NE multispecies fishery, means any vessel assigned a permit that is a member of an approved sector for a particular fishing year and that is subject to the restrictions and conditions of an approved sector operations plan, as specified in § 648.87.

Set-only trip means a fishing trip on which any federally permitted vessel deploys gear with the intention of retrieving it on a separate trip and does

not haul-back or retrieve any gear capable of catching fish on the set-only trip.

Shad means American shad (*Alosa sapidissima*) and hickory shad (*Alosa mediocris*).

Shucking or *to shuck* means opening or to open a scallop, surfclam, or ocean quahog and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surfclam, or ocean quahog shell.

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

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

Skate Management Unit means an area of the Atlantic Ocean from 35°15.3′ N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

Slip(s) or slipping catch in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-approved observer prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-approved observer after the catch is on board. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-approved observer, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

Small-mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

Smooth dogfish means *Mustelis canis*.

Sorting machine, with respect to the Atlantic sea scallop fishery, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias*.

Spiny Dogfish Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

Spot means *Leiostomus xanthurus*.

Square mesh, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh ''on the square,'' if the resulting mesh conforms with the above description of square mesh.

Squid means longfin squid (*Doryteuthis (Amerigo) pealeii*, formerly *Loligo pealeii*) or *Illex illecebrosus*.

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

State-operated permit bank means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified persons

and that meets the requirement of § 648.87(e).

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

Stock of concern, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

Stocks targeted by the default measures, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

Stretched mesh, with respect to the NE multispecies Ruhle Trawl, means mesh that is pulled so that slack in the mesh is eliminated and the mesh opening is closed.

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

Summer flounder means *Paralichthys dentatus*.

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Surfclams means Atlantic surfclams of the species *Spisula solidissima*.

Sweep, with respect to the NE multispecies limited access fishery, means the part of a bottom trawl that, during normal use, is in contact with the sea floor along the outer edges of the lower webbing of the net.

Swordfish means *Xiphias gladius*.

Target total allowable catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitas*.

Tied up to the dock or *tying up at a dock* means tied up at a dock, on a mooring, or elsewhere in a harbor.

Tilefish means golden tilefish and blueline tilefish, collectively, unless otherwise noted.

Tilefish FMP Monitoring Committee means a committee made up of staff representatives of the MAFMC, the NMFS Greater Atlantic Regional Fisheries Office, the Northeast Fisheries Science Center, up to three state representatives (the New England states having one representative and the Mid-Atlantic states having a maximum of two representatives) and one non-voting industry member. The MAFMC Executive Director or his designee chairs the committee.

Tilefish Management Unit means an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36′ N. Lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the United States-Canada border in which the United States exercises exclusive jurisdiction over all golden tilefish (*Lopholatilus chamaeleonticeps*) and blueline tilefish (*Caulolatilus microps)* fished for, possessed, caught or retained in or from such area.

Total Length (TL) means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side. For black sea bass, *Total Length (TL)* means the straight-line distance from the tip of the snout to the end of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side.

Transboundary Management Guidance Committee (TMGC), with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

Transboundary Resource Advisory Committee (TRAC), with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Trip Identifier means the complete serial number of the vessel logbook page completed for that trip.

Tub-trawl, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

Tuna purse seine gear, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

Under construction means that the keel had been laid or the vessel was under written agreement for construction or the vessel was under written contract for purchase.

Upon returning to port, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock at the end of a fishing trip.

U.S. at-sea processing (USAP), with respect to the Atlantic herring fishery, means the specification, pursuant to § 648.200, of the amount of herring available for processing by U.S. vessels issued an Atlantic herring processing permit as described in § 648.4(a)(10)(ii).

U.S./Canada Steering Committee, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

Used DAS baseline, with respect to the NE multispecies fishery, means the number of DAS that represent the historic level of DAS use associated with a particular limited access permit, as described in § 648.82(l).

Vessel length means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length is verified by an authorized officer or NMFS official.

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use on Atlantic sea scallop, NE multispecies, monkfish, Atlantic herring, and Atlantic surfclam and ocean quahog vessels, as required by this part.

VMS unit means a device installed on board a vessel used for vessel monitoring and transmitting the vessel's position as required by this part.

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705.

(b) Nothing in these regulations supersedes more restrictive state management measures for any of the species referenced in § 648.1 and, for Atlantic salmon, more restrictive local management measures.

§ 648.4 Vessel permits.

(a) *Fishery specific permit information*—(1) *NE multispecies vessels*. Except for vessels that have been issued a valid High Seas Fishing Compliance permit, have declared their intent to fish, and fish exclusively in the NAFO Regulatory Area as provided in § 648.17, any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess, or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

(i) *Limited access multispecies permits*—(A) *Eligibility*. To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(*1*) and (*2*) of this section.

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(*3*) *Application/renewal restrictions*. The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(B) *Application/renewal restrictions*. All limited access or moratorium permits established under this section must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a confirmation of permit history (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. If a vessel is issued more than one limited access or moratorium permit under this section, these permits will be regarded as a permit suite. Permit renewal or relinquishment must be made at the time the first permit application is submitted for a new permit year. Application for limited access or moratorium permits must be received no later than 30 days before the last day of the permit year of the earliest expiration date for any permit in the suite of such permits issued to the vessel. Failure to renew a limited access or moratorium permit in any permit year bars the renewal of the permit in subsequent years. Open access permits may not be issued to a vessel eligible to renew a limited access or moratorium permit until such time that the vessel's limited access or moratorium permit(s) are renewed or voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section, or otherwise transferred from the vessel.

(C) *Qualification restriction*. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit or CPH and any DAS allocation according to paragraph (a)(1)(i)(D) of this section.

(D) *Change in ownership*. The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels*. An owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed the horsepower of the vessel's baseline specifications by more than 20 percent, as applicable.

(*2*) The replacement vessel's length overall may not exceed the length overall of the vessel's baseline specifications by more than 10 percent, as applicable.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The upgraded vessel's horsepower may not exceed the horsepower of the vessel's baseline specifications by more than 20 percent, as applicable.

(*2*) The upgraded vessel's length overall may not exceed the vessel's baseline length overall by more than 10 percent, as applicable.

(G) *Consolidation restriction*. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) *Limited access permit restrictions*. (*1*) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

(J) *Confirmation of permit history*. Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of

the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of a limited access or moratorium permit*. If a vessel's limited access or moratorium permit for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access or moratorium permit for that fishery may be reissued or renewed based on that vessel's limited access or moratorium permit history or to any other vessel relying on that vessel's limited access or moratorium permit history.

(L) *Restriction on permit splitting*. A limited access permit issued pursuant to this section may not be issued to a vessel or its replacement or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Appeal of denial of permit—(1) Eligibility*. Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final

administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(N) *Accumulation limits—(1) 5-percent permit/CPH restriction*. Any person with an ownership interest in the NE multispecies fishery is not eligible to be issued a limited access NE multispecies permit or CPH for a vessel if the issuance results in the person having an ownership interest in excess of 5 percent of all limited access NE multispecies permits and CPH that are issued as of the date the permit/CPH application is received by the NMFS.

(*2*) *PSC limit*. Any person with an ownership interest in the NE multispecies fishery is not eligible to be issued a limited access NE multispecies permit or CPH for a vessel that results in that person's average potential sector contribution (PSC) exceeding a share of 15.5 for all the allocated stocks in aggregate, except as provided in paragraph (a)(1)(i)(N)(*4*) of this section.

(*3*) *Grandfather provision*. Paragraphs (a)(1)(i)(N)(*1*) and (*2*) of this section do not apply to a limited access NE multispecies permit or CPH if held on April 7, 2011. Any additional limited access NE multispecies permit or CPH that a person acquires after April 7, 2011, are subject to the accumulation limits specified within this section.

(*4*) Any person can be issued one limited access NE multispecies permit or CPH that results in that person's total PSC exceeding the PSC limit as described in this section. That person must identify to NMFS on or before March 31 of each year, vessel permits or CPH that will be rendered unusable the upcoming fishing year so that the person's total PSC for the upcoming fishing year is an amount equal to or below the PSC limit. Beginning on May 1, the permits or CPH rendered unusable may not be fished, leased, or enrolled in a sector by that person for the remainder of the fishing year, but may be transferred by that person. The transfer of a permit or CPH rendered unusable shall be made through an arm's-length transaction (for example, to an independent and unrelated entity that does not share an ownership interest with that person).

(ii) *Open access permits*. A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

(2) *Atlantic sea scallop vessels*—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop vessel permit pursuant to this section.

(i) *Limited access scallop permits*. Any vessel of the United States that possesses or lands more than 600 lb (272.2 kg) of shucked scallops, or 50 bu (17.6 hL) of in-shell scallops per trip South of 42°20′ N. Lat., or 75 bu (26.4 hL) of in-shell scallops per trip North of 42°20′ N. Lat, or possesses more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(A) *Eligibility*. To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, be replacing a vessel that was issued a limited access scallop permit for the preceding year, or be replacing

a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(1)(i)(H) of this section.

(I) *Limited access permit restrictions.* A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop permit must elect a permit category upon the vessels permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel, and/or a confirmation of permit history, if, as a result of the issuance of the permit and/or confirmation of permit history, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in a total number of limited access scallop vessels and limited access scallop confirmations of permit history in excess of 5 percent of the number of all limited access scallop vessels and confirmations of permit history at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 1995 and thereafter, in compliance with the ownership restrictions in paragraph (a)(2)(i)(*M*)(1) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(N) [Reserved]

(O) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(P) *VMS requirement.* A vessel issued a limited access scallop permit, as specified in paragraph (a)(2)(i) of this section, except a vessel issued an occasional scallop permit that is not fishing in a sea scallop access area, must have an operational VMS installed. Prior to issuance of a limited access scallop permit, NMFS must receive a signed VMS certification from the vessel owner and be notified by the VMS vendor that the unit has been installed and is operational.

(ii) *LAGC scallop permits.* Any vessel of the United States that has not been issued a limited access scallop permit pursuant to paragraph (a)(2)(i) of this section, and any vessel issued a limited access scallop permit that fishes for scallops outside of the scallop DAS program described in § 648.53(b) or the Area Access program described in § 648.60, that possesses, retains, or lands scallops in or from Federal waters, must be issued an LAGC scallop permit and must comply with the permit requirements described in paragraphs (a)(2)(ii)(A), (B), or (C) of this section. To be issued an LAGC scallop permit, a vessel owner must meet the qualification criteria specified in paragraphs (a)(2)(ii)(D) or (F) of this section and

must comply with the application procedures specified in paragraph (a)(2)(ii)(H) of this section.

(A) *Individual fishing quota LAGC permit.* To possess or land up to 600 lb (272.2 kg) of shucked meats, or land up to 75 bu (26.4 hL) of in-shell scallops per trip, or possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

(B) *Northern Gulf of Maine LAGC permit.* To possess or land up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) in-shell scallops per trip, or to possess up to 50 bu (17.6 hL) seaward of the VMS demarcation line in the NGOM Scallop Management Area, a vessel must have been issued a Northern Gulf of Maine LAGC scallop permit (NGOM scallop permit). A vessel issued a NGOM scallop permit may not fish for scallops outside of the NGOM Scallop Management Area as defined in § 648.62, and may not possess or land more than 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops at any time, except the vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial NGOM scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(F) of this section.

(C) *Incidental catch LAGC permit.* To possess or land up to 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) in-shell scallops per trip, or possess up to 10 bu (3.52 hL) in-shell scallops per trip seaward of the VMS demarcation line, but not more than these amounts per trip, a vessel must have been issued an incidental catch general category scallop permit (Incidental scallop permit). A vessel issued an incidental catch general scallop permit may not possess or land more than 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops at any time, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial incidental catch category scallop permit is contingent upon the vessel owner submitting the required application and other information that demonstrates that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(G) of this section.

(D) *Eligibility for an IFQ scallop permit.* A vessel is eligible for and may be issued an IFQ scallop permit if it meets both eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section, or is replacing a vessel that meets both the eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section. A vessel owner may appeal NMFS's determination that a vessel does not meet the requirements specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section by complying with the appeal process, as specified in paragraph (a)(2)(ii)(O) of this section.

(*1*) *Permit criterion.* A vessel must have been issued a general category scallop permit in at least one scallop fishing year, as defined in § 648.2, between March 1, 2000, and November 1, 2004.

(*2*) *Landings criterion.* A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(*1*) of this section. To qualify, scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. NMFS dealer data shall be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.4 kg) of scallops on a trip, only 400 lb (181.4 kg) will be credited toward the landings criteria. For dealer reports that indicate that the landings were bushels of in-shell scallops, a conversion of 8 lb (3.63 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.4 kg) per trip. For dealer reports that indicate that the landings were reported in pounds of in-shell scallops, the weight shall be converted to meat-weight using the formula of one pound (0.45 kg) of scallop meats for 8.33 lb (3.78 kg) of in-shell scallops, up to the

maximum of 400 lb (181.4 kg) per trip, for qualification purposes.

(E) *Contribution factor for determining a vessel's IFQ*. An eligible IFQ scallop vessel's best year of scallop landings during the qualification period of March 1, 2000, through November 1, 2004, as specified in § 648.53(h)(2)(ii)(A), and the vessel's number of years active, as specified in § 648.53(h)(2)(ii)(B), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(2)(ii)(C). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit, consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

(F) *Eligibility for NGOM or Incidental scallop permit*. A vessel that is not eligible for, or for which the vessel's owner chooses not to apply for, an IFQ scallop permit, may be issued either a NGOM scallop permit or an Incidental scallop permit if the vessel was issued a general category scallop permit as of November 1, 2004, or if the vessel is replacing a vessel that was issued a general category scallop permit as of November 1, 2004. A vessel owner may appeal NMFS's determination that a vessel does not meet this criterion by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section. A vessel that qualifies for an IFQ scallop permit automatically qualifies for an NGOM or Incidental scallop permit if the vessel's owner chooses to be issued an NGOM or Incidental scallop permit instead of the IFQ scallop permit.

(G) *LAGC permit restrictions—(1) Change of permit category—(i) IFQ scallop permit*. A vessel issued an IFQ scallop permit may not change its general category scallop permit category at any time without voluntarily relinquishing its IFQ scallop permit eligibility as specified in paragraph (a)(2)(ii)(M) of this section. If the vessel owner has elected to relinquish the vessel's IFQ permit and instead be issued an NGOM or Incidental scallop permit, the IFQ permit shall be permanently relinquished.

(*ii*) *NGOM and Incidental scallop permit*. A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph, (a)(2)(ii)(G)(*1*)(*ii*). The owners of a vessel issued an NOGM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity each fishing year to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(*2*) *VMS requirement*. A vessel issued a LAGC permit must have an operational VMS installed. Issuance of an Atlantic sea scallop permit requires the vessel owner to submit a copy of the vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

(H) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than August 30, 2008. Applications for LAGC permits that are not postmarked on or before August 30, 2008, may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce. If NMFS determines that the vessel owner has failed to pay a cost recovery fee in accordance with the cost recovery requirements specified at § 648.53(h)(4)(ii), the IFQ permit shall not be renewed.

(I) *Qualification restriction*. (*1*) See paragraph (a)(1)(i)(C) of this section for restrictions applicable to limited access scallop permits.

(*2*) Notwithstanding paragraph (a)(1)(i)(L) of this section, scallop landings history generated by separate owners of a single vessel at different times during the qualification period

for LAGC scallop permits may be used to qualify more than one vessel, provided that each owner applying for an LAGC scallop permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(*3*) Notwithstanding paragraph (a)(1)(i)(L) of this section, a vessel owner applying for a LAGC permit who sold or transferred a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history of such vessel as specified in paragraph (a)(1)(i)(D) of this section, before July 1, 2008, may use the general category scallop history to qualify a different vessel for the initial IFQ scallop permit, regardless of whether the history from the sold or transferred vessel was used to qualify another vessel for another limited access permit.

(J) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(K) *Replacement vessels*. A vessel owner may apply to replace a qualified LAGC vessel with another vessel that he/she owns. There are no size or horsepower restrictions on replacing general LAGC vessels, unless the qualified vessel that will be replaced is subject to such restriction because of other limited access permits issued pursuant to § 648.4. In order for a LAGC that also has other limited access permits issued pursuant to § 648.4 to be replaced by a vessel that does not meet the replacement and upgrade restrictions specified for those other limited access permits, the other limited access permits must be permanently relinquished, as specified in paragraph (a)(1)(i)(K) of this section.

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. Except as provided in paragraphs (a)(2)(ii)(I)(*2*) and (*3*) of this section, paragraph (a)(1)(i)(L) of this section applies.

(O) *Appeal of denial of permit—(1) Eligibility*. Any applicant eligible to apply for an LAGC scallop permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal.

(*2*) *Contribution factor appeals*. Any applicant eligible to apply for a IFQ scallop permit who disputes NMFS's determination of the vessel's contribution factor specified in paragraph (a)(2)(ii)(E) of this section may appeal NMFS's determination to the Regional Administrator within 30 days of the notification of the vessel's best year and years active. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. A vessel owner may appeal both the eligibility criteria and the contribution factor and must submit the appeal for both at the same time. An appeal of contribution factor determinations shall be reviewed concurrently with an eligibility appeal, if applicable.

(*3*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on

the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*4*) *Status of vessels pending appeal.* A vessel denied an LAGC scallop permit may fish while under appeal, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator temporarily authorizing the vessel to fish under the limited access general category permit. The Regional Administrator shall issue such a letter that shall be effective only during the pendency of any appeal. The temporary letter of authorization must be carried on board the vessel and all requirements of the permit category for which the appeal has been made shall apply. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the temporary authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial, regardless of the date of the owner's receipt of the denial.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.106.

(i) *Moratorium permits*—(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.106 in the EEZ, a vessel must have been issued a summer flounder moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, horsepower) of the vessel as of March 22, 1999, unless the vessel is in the process of construction or rerigging or under agreement or written contract for construction or rerigging, as of the effective baseline specification date in which case the baseline specifications will be established no later than February 19, 2000.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.106.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.108(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum of 7 days. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the FEDERAL REGISTER. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

(4) *Surfclam and ocean quahog vessels.* Any vessel of the United States that fishes for surfclams or ocean quahogs, except vessels taking surfclams and

ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surfclam or ocean quahog permit, respectively.

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria in paragraphs (a)(1) and (a)(2) of this section, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999. After May 19, 1999, to be eligible to apply for a Maine mahogany quahog permit, a vessel must have been issued a Maine mahogany quahog permit for the preceding year, be replacing a vessel that was issued a Maine mahogany quahog permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of denial of a permit.* (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) *VMS Requirement.* (A) *Surfclam and ocean quahog open access permits.* In order to be eligible for issuance of an open access surfclam or ocean quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(B) *Maine mahogany quahog limited access permit.* In order to be eligible for issuance of a Maine mahogany quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. By January 1, 2009, unless otherwise exempted under paragraph (a)(4)(ii)(B)(*1*) of this section. The vessel owner/operator must activate the VMS unit and provide verification of vendor activation from

a NMFS-approved VMS vendor as described in § 648.9. Verification is done by completing, signing, and mailing or faxing a VMS certification form to the NMFS Northeast Region Office of Law Enforcement.

(*1*) *Special VMS exemption for Maine mahogany quahog vessels.* Vessel owners eligible to renew a limited access Maine mahogany quahog permit may do so without proof of installation of a VMS, provided the vessel does not fish for, catch, or possess; or attempt to fish for, catch, or posses; Maine mahogany quahogs. Proof of VMS installation must be provided to the NMFS Northeast Region Office of Law Enforcement prior to departure on any fishing trip on which ocean quahogs may be caught or landed. Once a vessel issued a Maine mahogany quahog permit has elected to participate in the Maine mahogany quahog fishery, the vessel must keep the VMS unit turned on and functioning as specified under § 648.9. Once a limited access Maine mahogany quahog permitted vessel has participated in the Maine mahogany quahog fishery, this exemption no longer applies.

(*2*) [Reserved]

(5) *Mackerel, squid, and butterfish vessels.* Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) *Longfin squid moratorium permits*—(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain longfin squid in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a longfin squid moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. Beginning in fishing year 2018, a vessel may be eligible for and could be issued a Tier 1, Tier 2, or Tier 3 longfin squid moratorium permit if the vessel and associated fishing history meet the criteria described under paragraphs (a)(5)(i)(A)(*1*) through (*3*) of this section.

(*1*) *Tier 1 longfin squid moratorium permit.* Beginning in February 2019, the Regional Administer shall automatically issue a Tier 1 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in confirmation of permit history (CPH) during calendar year 2018 that meets the eligibility criteria in this paragraph (a)(5)(i)(A)(*1*). To be eligible for a Tier 1 permit, a vessel must have been issued a valid longfin squid/butterfish moratorium permit and landed more than 10,000 lb (4,536 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Fishing history, including for a permit held in confirmation of permit history, can be used by a vessel to qualify for and be issued a Tier 1 longfin squid moratorium permit, provided the Regional Administrator has determined that the fishing and permit history of such vessel has been lawfully retained by the applicant. Landings data used in this qualification must be verified by dealer reports submitted to NMFS. A vessel that was not automatically issued a Tier 1 longfin squid moratorium permit may apply for such a permit in accordance with paragraph (a)(5)(i)(B) of this section.

(*2*) *Tier 2 longfin squid moratorium permit.* Beginning in February 2019, the Regional Administer shall automatically issue a Tier 2 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in CPH during fishing year 2018 that does not qualify for a Tier 1 longfin squid moratorium permit, as described in paragraph (a)(5)(i)(A)(*1*) of this section.

(*3*) *Tier 3 longfin squid moratorium permit.* To be issued a Tier 3 permit, a vessel must have been issued an open access squid/butterfish permit and landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Landings data used in this qualification must be verified by dealer reports submitted to NMFS.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section. Unless automatically issued a Tier 1 or 2 longfin squid moratorium permit in accordance with paragraphs

(a)(5)(i)(A)(*1*) or (*2*) of this section, a vessel owner may submit an initial application for a longfin squid moratorium permit described in paragraph (a)(5)(i)(A)(*1*) through (*3*) of this section. The initial application must be received by NMFS or postmarked no later than February 29, 2020. An initial application for a longfin squid moratorium permit that is not postmarked before February 29, 2020, will not be processed because of this regulatory restriction, and will be returned to the sender with a letter explaining the reason for its return.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section. Longfin squid landings history generated by separate owners of a single vessel at different times during the qualification period for a longfin squid moratorium permit may be used to qualify more than one vessel, provided that each owner applying for such a permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, to be eligible for a longfin squid moratorium permit, a replacement vessel must meet the criteria specified in paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the upgrade provisions in paragraph (a)(1)(i)(F) of this section apply to a vessel issued a longfin squid moratorium permit.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the vessel baseline specification measures specified in paragraph (a)(3)(i)(H) of this section apply to a vessel issued a longfin squid moratorium permit.

(I) *One-time longfin squid moratorium permit swap*. An entity that owns multiple vessels issued longfin squid/butterfish moratorium permits as of May 26, 2017, has a one-time opportunity to swap one Tier 1 longfin squid moratorium permit issued to one of its vessels with a longfin squid Tier 2 moratorium permit issued to another of its vessels. No other fishery permits issued under this section may be transferred pursuant to this paragraph (a)(5)(i)(I). To be eligible for the one-time longfin squid moratorium permit swap, the following conditions must be met:

(*1*) An application to swap longfin squid moratorium permits must be received by the Regional Administrator within one year of the Regional Administrator's final decision on the issuance of the longfin squid Tier 1 or Tier 2 moratorium permits to be exchanged;

(*2*) At the time of the application, the owner of record for both vessels and permits involved in the permit swap must be identical to the owner of record of the same two vessels issued the associated longfin squid/butterfish moratorium permits as of May 26, 2017;

(*3*) The length overall of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the length overall associated with that individual permit's vessel baseline specifications by more than 10 percent; and

(*4*) The horsepower of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the horsepower associated with that individual permit's vessel baseline specifications by more than 20 percent.

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of permit denial—(1) Eligibility*. Any applicant eligible to apply for a longfin squid moratorium permit who is denied such permit by the Regional Administrator may appeal the denial to the Regional Administrator within 30 days of the notice of denial.

(*2*) *Appeal review*. Review of the Regional Administrator's decisions on longfin squid moratorium permit issuance will be conducted by the NOAA Fisheries National Appeals Office pursuant to the procedures set

forth in 15 CFR part 906, unless otherwise modified by the procedures described here. The National Appeals Office shall make findings and submit its decision to the Regional Administrator and the applicant. The Regional Administrator will review the National Appeals Office decision and make a final decision regarding any appeal in accordance with 15 CFR 906.17. The Regional Administrator's decision is the final decision of the Department of Commerce.

(*i*) *Appeal request*. An appeal of the denial of an initial permit application must be made in writing and submitted to and received by the Regional Administrator or postmarked no later than 30 days after the denial of an initial longfin squid moratorium permit application. Upon receipt, the Regional Administrator shall forward each appeal request to the National Appeals Office. Appeals must be based on the grounds that the information used by the Regional Administrator in denying the original permit application was incorrect. Items subject to appeal include, but are not limited to, the accuracy of the amount of landings, the correct assignment of landings to a vessel and/or permit holder, and the issuance of a permit to a particular entity. The appeal request must state the specific grounds for the appeal, and include information to support the appeal. An appellant may request a hearing by including a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence alone. An appellant may also request a letter of authorization (LOA), as described in paragraph (a)(5)(i)(M)(*3*) of this section, to continue to fish during an appeal. If the appeal of the denial of the permit application is not made within 30 days, the denial of the permit application shall constitute the final decision of the Department of Commerce. The appeal will not be reviewed without submission of information in support of the appeal.

(*ii*) *Reconsideration*. Should the National Appeals Office deny an appeal request submitted according to paragraph (a)(5)(i)(M)(*2*)(*i*) of this section, the applicant may request a reconsideration of the appeal by the National Appeals Office. A reconsideration request must be made in writing and submitted to the National Appeals Office within 10 days of that office's decision on the appeal, as instructed by the National Appeals Office.

(*3*) *Status of vessels pending appeal*. A vessel denied a longfin squid moratorium permit may fish for longfin squid while the decision on the appeal is pending within NMFS, provided that the denial has been appealed, the appeal is pending, and the vessel has on board an LOA from the Regional Administrator authorizing the vessel to fish under the longfin squid moratorium permit category for which the applicant has submitted an appeal. A request for an LOA must be made when submitting an appeal of the denial of the permit application. The Regional Administrator will issue such a letter for the pending period of any appeal. The LOA must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after the receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(ii) *Illex squid and butterfish moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain *Illex* squid or butterfish in excess of the incidental catch allowance in paragraph (a)(5)(iv) of this section in the EEZ, a vessel must have been issued an *Illex* squid or butterfish moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. Beginning in February 2019, a vessel that was previously issued a longfin squid/butterfish moratorium permit during fishing year 2018 shall be automatically issued a separate butterfish moratorium permit.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(iii) *Limited access Atlantic mackerel permits*. (A) *Vessel size restriction*. A vessel of the United States is eligible for and may be issued an Atlantic mackerel permit to fish for, possess, or land Atlantic mackerel in or from the EEZ, except for any vessel that is greater than or equal to 165 ft (50.3 m) in length overall (LOA), or greater than 750 gross registered tons (680.4 mt), or the vessel's total main propulsion machinery is greater than 3,000 horsepower. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified in § 648.6(a)(2)(i).

(B) *Limited access mackerel permits*. A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (7.46 mt) of mackerel per trip, except vessels that fish exclusively in state waters for mackerel, must have been issued and carry on board one of the limited access mackerel permits described in paragraphs (a)(5)(iii)(B)(*1*) through (*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *Tier 1 Limited Access Mackerel Permit*. A vessel may fish for, possess, and land mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Tier 2 Limited Access Mackerel Permit*. A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Tier 3 Limited Access Mackerel Permit*. A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for mackerel permits*. To be eligible to apply for a Tier 1, Tier 2, or Tier 3 limited access mackerel permit to fish for and retain Atlantic mackerel in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a Tier 1, Tier 2, or Tier 3 limited access mackerel permit, as applicable, for the preceding year, be replacing a vessel that was issued a limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(D) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(E) *Qualification restrictions*. See paragraph (a)(1)(i)(C) of this section.

(F) *Change of ownership*. See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(H) *Vessel baseline specification*. (*1*) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(*1*) must include a signed certification by the individual

or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(*2*) If a mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the mackerel limited access application. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(*1*) of this section.

(I) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

(J) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(K) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(L) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(iv) *Atlantic mackerel incidental catch permits*. Any vessel of the United States may obtain a permit to fish for or retain up to 20,000 lb (9,072 kg) of Atlantic mackerel as an incidental catch in another directed fishery, provided that the vessel does not exceed the size restrictions specified in paragraph (a)(5)(iii)(A) of this section. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(v) *Party and charter boat permits*. The owner of any party or charter boat must obtain a permit to fish for, possess, or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(vi) *Squid/butterfish incidental catch permit*. Any vessel of the United States may obtain a permit to fish for or retain up to 250 lb (113 kg) of longfin squid, 600 lb (272 kg) of butterfish, or up to 10,000 lb (4,536 kg) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

(6) *Scup vessels*. Beginning on January 1, 1997, and subject to the eligibility requirements specified in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup for sale, barter or trade, in or from the EEZ north of 35°15.3′ N. lat. Any vessel, other than a party or charter boat, that observes the possession limit restrictions established pursuant to, and the prohibition on sale specified in, § 648.128 is exempt from the permit requirement.

(i) *Moratorium permit*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain scup, a vessel must have been issued a scup moratorium permit for the preceding year, be replacing a vessel that was issued a scup moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permit*. Any party or charter boat is eligible for a permit to fish for scup, other than a scup moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to, and the prohibitions on sale specified in, § 648.125.

(7) *Black sea bass vessels*. Beginning June 1, 1997, any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to § 648.145.

(i) *Moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, a vessel must have been issued a black sea bass moratorium permit for the preceding year, be replacing a vessel that was issued a black sea bass moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

(ii) *Party and charter boat permit*. The owner of any party or charter boat must obtain a permit to fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, while carrying passengers for hire.

(8) *Atlantic bluefish vessels*. (i) *Commercial*. Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels*. All party or charter boats must have been issued and carry on board a valid party or charter boat permit to fish for, possess, or land Atlantic bluefish in or from the EEZ if carrying passengers for hire. Persons on board such vessels must observe the possession limits established pursuant to § 648.164 and the prohibitions on sale specified in § 648.14(q).

(9) *Monkfish vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits*. (A) *Eligibility*. A vessel may be issued a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(*1*) *Category A permit (vessels without NE multispecies or scallop limited access DAS permits)*. The vessel landed at least

50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*2*) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without NE multispecies or scallop limited access DAS permits that do not qualify for a Category A permit)*. The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*3*) *Category C permit (vessels with NE multispecies or scallop limited access DAS permits)*. The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(*4*) *Category D permit (all vessels with NE multispecies limited access DAS permits and vessels less than 51 GRT with scallop limited access DAS permits that do not qualify for a Category C permit)*. The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(*5*) *Category F permit (vessels electing to participate in the Offshore Fishery Program*). To fish in the Offshore Fishery Program, as described under § 648.95, vessels must apply for and be issued a Category F permit and fish under this permit category for the entire fishing year. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(*6*) *Category G permit (vessels restricted to fishing south of 38°40′ N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, or D permit)*. The vessel landed at least 50,000 lb (22,680 kg) tail weight or 166,000 lb (75,296 kg) whole weight of monkfish in the area south of 38°00′ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(*7*) *Category H permit (vessels restricted to fishing south of 38°40′ N. lat. As described in § 648.92(b) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit)*. The vessel landed at least 7,500 lb (3,402 kg) tail weight or 24,900 lb (11,294 kg) whole weight of monkfish in the area south of 38°00′ N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(B) *Application/renewal restrictions*. No one may apply for an initial limited access monkfish permit for a vessel after November 7, 2000, unless otherwise allowed in this paragraph (a)(9)(i)(B). Vessels applying for an initial limited access Category G or H permit, as described in paragraphs (a)(9)(i)(A)(*6*) and (*7*) of this section, must do so on or before April 30, 2006.

(C) *Qualification restrictions*. (*1*) See paragraph (a)(1)(i)(C) of this section.

(*2*) *Vessels under agreement for construction or under reconstruction*. A vessel may be issued a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership*. (*1*) See paragraph (a)(1)(i)(D) of this section.

(*2*) A vessel may be issued a limited access monkfish permit if it was under written agreement for purchase as of February 27, 1995 and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels*. (*1*) See paragraph (a)(1)(i)(E) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(*4*) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel*. (*1*) See paragraph (a)(1)(i)(F) of this section.

(*2*) A vessel ≥51 GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(*2*) and (*4*) of this section, may qualify for and fish under the permit category of the smaller vessel.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification*. See paragraph (a)(1)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. A limited access monkfish permit may not be issued to a vessel or to its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(ii) *Monkfish incidental catch vessels (Category E)*. A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit under paragraph (a)(9)(i)(A) of this section is eligible for and may be issued a monkfish incidental catch (Category E) permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

(10) *Atlantic herring vessels*—(i) Except as provided herein, any vessel of the United States must have been issued and have on board a valid Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ. This requirement does not apply to the following:

(A) A vessel that possesses herring solely for its use as bait, providing the vessel does not use or have on board purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on any trip in which herring is fished for, possessed, or landed, and does not transfer, sell, trade, or barter such herring;

(B) A skiff or other similar craft used exclusively to deploy the net in a purse seine operation during a fishing trip of a vessel that is duly permitted under this part; or

(C) At-sea processors that do not harvest fish, provided that at-sea processor vessels are issued the at-sea processor permit specified under § 648.6(a)(2).

(ii) *Atlantic herring carrier*. An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.10(m)(1). Once a vessel declares an Atlantic herring carrier trip via VMS, it is bound to the VMS operating requirements, specified at § 648.10, for the remainder of the fishing year. On Atlantic herring carrier trips under either the letter of authorization or an Atlantic herring carrier

VMS trip declaration, an Atlantic herring carrier is exempt from the VMS, IVR, and VTR vessel reporting requirements, as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. If not declaring an Atlantic herring carrier trip via VMS, an Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and there is a minimum enrollment period of 7 calendar days for a letter of authorization. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not conduct fishing activities, except for purposes of transport, or possess any fishing gear on board the vessel capable of catching or processing herring, and they must be used exclusively as an Atlantic herring carrier vessel, and they must carry observers if required by NMFS. While operating under a valid letter of authorization or Atlantic herring carrier VMS trip declaration, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not possess, transfer, or land any species other than Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels specified at § 648.86(a)(3) and (k).

(iii) *Vessel size limitation*. A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, possess, or land Atlantic herring in or from the EEZ, except for any vessel that is ≥165 ft (50.3 m) in length overall (LOA), or >750 GRT (680.4 mt), or the vessel's total main propulsion machinery is >3,000 horsepower. Vessels that exceed the size or horsepower restrictions are eligible to be issued an at-sea processing permit specified under § 648.6(a)(2)(ii).

(iv) *Limited access herring permits*. (A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(*1*)–(*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *All Areas Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Areas 2 and 3 Limited Access Herring Permit*. A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Limited Access Incidental Catch Herring Permit*. (*i*) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(*1*) and (*2*) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*ii*) A vessel that does not qualify for an All Areas Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*1*) of this section, but qualifies for the Areas 2 and 3 Limited Access Herring Permit specified in paragraph (a)(10)(iv)(A)(*2*) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for All Areas and Areas 2 and 3 Limited Access Herring Permits, and Confirmation of Permit History (CPH)*. A vessel is eligible for and may be issued either an All Areas or Areas 2 and 3 Limited Access Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(*1*) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(*2*) and (*3*) of this section.

(*1*) *Permit history criteria for All Areas and Areas 2 and 3 Permits*. (*i*) The vessel

must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for the All Areas Limited Access Herring Permit*—(*i*) The vessel must have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*2*)(*i*) of this section through December 31, 2004.

(*iii*) Landings criteria for vessels using landings from pair trawl operations. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as verified by dealer reports submitted to NMFS or valid dealer receipts, if dealer reports were not required by NMFS.

(*3*) *Landings criteria for the Areas 2 and 3 Limited Access Herring Permit.* (*i*) The vessel must have landed at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*3*)(*i*) of this section through December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* See

paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section.

(*4*) *CPH*. A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Incidental Catch Limited Access Herring Permit, and CPH*. A vessel is eligible for and may be issued an Incidental Limited Access Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(*1*) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(*2*) of this section.

(*1*) *Permit history criteria*. (*i*) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, longfin or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, longfin or *Illex* squid, or butterfish that was issued between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for Incidental Catch Limited Access Herring Permit*. (*i*) The vessel must have landed at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, e.g., transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to the vessel's landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract*. An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(*2*)(*i*) of this section through December 31, 2004.

(*3*) *CPH*. A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(D) *Application/renewal restrictions*. (*1*) No one may apply for an initial limited access Atlantic herring permit or a CPH under paragraph (a)(10)(iv)(L) of

this section after May 31, 2008, or after the abandonment or voluntary relinquishment of permit history as specified in paragraph (a)(10)(iv)(M) of this section.

(*2*) An applicant who submits written proof that an eligible vessel was sold, with the seller retaining the herring history through a written agreement signed by both parties to the sale or transfer, may not utilize such history if the vessel's history was used to qualify another vessel for another limited access permit.

(*3*) All limited access permits established under this section must be issued on an annual basis by April 30, the last day of the year for which the permit is issued, unless a CPH has been issued as specified in paragraph (a)(10)(iv)(L) of this section. Application for such permits must be received no later than March 31, which is 30 days before the last day of the permit year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(E) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(F) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(H) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(I) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(J) *Vessel baseline specifications*. See paragraph (a)(1)(i)(H) of this section. If a herring CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated.

(K) *Limited access permit restrictions*. [Reserved]

(L) *Confirmation of Permit History*. See paragraph (a)(1)(i)(J) of this section.

(M) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section. Notwithstanding paragraph (a)(1)(i)(L), vessel owners applying for a limited access herring permit who sold vessels with limited access permits and retained the herring history before applying for the initial limited access herring permit may not use the herring history to qualify a vessel for the initial limited access herring permit, if the issuance of such permit would violate the restrictions on permit splitting. Furthermore, notwithstanding paragraph (a)(1)(i)(L), for the purposes of the Atlantic herring fishery, herrings landings history generated by separate owners of a single vessel at different times may be used the qualify more than one vessel, provided that each owner applying for a limited access permit, demonstrates that he/she created distinct fishing histories, and that such histories have been retained.

(O) *Appeal of denial of permit*—(*1*) *Eligibility*. Any applicant eligible to apply for a limited access herring permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was based on incorrect data. The appeal must be in writing, and must state the specific grounds for the appeal.

(*2*) *Appeal review*. The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal*. A vessel denied a limited access herring permit may fish under the limited access herring permit, provided that the denial has been appealed, the appeal is

pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator shall issue such a letter for the pendency of any appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(v) *Open access herring permit*. A vessel that has not been issued a limited access Atlantic herring permit may obtain an open access incidental Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip, and is limited to one landing per calendar day.

(vi) *Open access herring permits*. A vessel that has not been issued a limited access Atlantic herring permit may obtain:

(A) An All Areas open access Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip from all herring management areas, limited to one landing per calendar day; and/or

(B) An Areas 2/3 open access Atlantic herring permit to possess up to 20,000 lb (9 mt) of herring per trip from Herring Management Areas 2 and 3, limited to one landing per calendar day, provided the vessel has also been issued a Limited Access Atlantic Mackerel permit, as defined at § 648.4(a)(5)(iii).

(11) *Spiny dogfish vessels*. Any vessel of the United States that commercially fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(12) *Tilefish vessels*—(i) *Commercial vessel permits*. Any vessel of the United States must have been issued, under this part, and carry on board, a valid commercial vessel permit to fish for, possess, or land golden tilefish or blueline tilefish for a commercial purpose, in or from the Tilefish Management Unit.

(A) A commercial vessel must fish under the authorization of a golden tilefish IFQ allocation permit, issued pursuant to § 648.294, to possess, or land golden tilefish in excess of the trip limit as specified under § 648.295(a).

(B) [Reserved]

(ii) *Party and charter vessel permits*. Any party or charter vessel must have been issued, under this part, a Federal charter/party vessel permit to fish for either golden tilefish or blueline tilefish in the Tilefish Management Unit, if it carries passengers for hire. Such vessel must observe the recreational possession limits as specified at § 648.296 and the prohibition on sale.

(13) *Red Crab vessels*. Any vessel of the United States must have been issued and have on board a valid red crab vessel permit to fish for, catch, possess, transport, land, sell, trade, or barter, any red crab or red crab part in or from the EEZ portion of the Red Crab Management Unit.

(i) *Limited access red crab permit*—(A) *Eligibility*. Any vessel of the United States that possesses or lands more than the incidental amount of red crab, as specified in § 648.263(b), per red crab trip must have been issued and carry on board a valid limited access red crab permit.

(B) *Application/renewal restrictions*. The provisions of paragraph (a)(1)(i)(B) of this section apply.

(C) *Qualification restrictions*. The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership*. The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels*. (*1*) To be eligible for a limited access permit under this section, the replacement vessel's length overall may not exceed the vessel's baseline length overall by more than 10 percent. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

(*2*) A vessel that lawfully replaced a vessel that meets the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section may qualify for and fish under the permit category for which the replaced vessel qualified.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the new length overall of the upgraded vessel does exceed the

vessel's baseline length overall by more than 10 percent, as applicable.

(G) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline length.* The vessel baseline length in this section is the overall length of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

(I) *Limited access permit restrictions.* A vessel issued a limited access red crab permit may not be issued a red crab incidental catch permit during the same fishing year.

(J) *Confirmation of permit history (CPH).* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person and has not been replaced, must apply for and receive a CPH that confirms the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel met the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(13)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting.* The provisions of paragraph (a)(1)(i)(L) of this section apply.

(ii) *Red crab incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a red crab limited access permit is eligible for and may be issued a red crab incidental catch permit to catch, possess, transport, land, sell, trade, barter, up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit. Such vessel is subject to the restrictions in § 648.263(b).

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

(15) *Mid-Atlantic forage species and Atlantic chub mackerel.* Any commercial fishing vessel must have been issued and have on board a valid commercial vessel permit issued in accordance with this paragraph (a)(15) to fish for, possess, transport, sell, or land Mid-Atlantic forage species or Atlantic chub mackerel in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c).

The vessel permit requirements specified in this paragraph (a)(15) for a commercial fishing vessel fishing for, possessing, transporting, selling, or landing Atlantic chub mackerel are effective through December 31, 2020. A vessel that fishes for such species exclusively in state waters is not required to be issued a Federal permit.

(b) *Permit conditions*. (1)(i) Any person who applies for and is issued or renews a fishing permit under this section agrees, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed); are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part, except tilefish, must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium; or a spiny dogfish or bluefish commercial vessel permit, must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the FEDERAL REGISTER stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish commercial permit must agree not to land golden tilefish or blueline tilefish after NMFS has published a notification in the FEDERAL REGISTER stating that the respective quota for the golden tilefish incidental fishery and/or the commercial blueline tilefish fishery has been harvested, as described in § 648.295, unless landing golden tilefish authorized under a golden tilefish IFQ allocation permit. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

(ii) Any person who applies for or has been issued a limited access or moratorium permit on or after September 4, 2007 agrees, as a condition of the permit, that the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent permit year, or the permit either has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(2) A vessel that is issued or renewed a limited access or moratorium permit on or after September 4, 2007 for any fishery governed under this section is prohibited from fishing for, catching, possessing, and/or landing any fish for which the vessel would be authorized

under the respective limited access or moratorium permit in or from state and/or Federal waters in any subsequent permit year, unless and until the limited access or moratorium permit has been issued or renewed pursuant to paragraph (a)(1)(i)(B) of this section and the valid permit is on board the vessel. This prohibition does not apply to a vessel for which the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(c) *Permit applications*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed and submitted to the Regional Administrator at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Administrator to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Vessel permit information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all persons holding any ownership interest in a NE multispecies permit or CPH or shareholders owning 25 percent or more of the corporation's shares for other fishery permits; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

(ii) An application for an initial limited access multispecies hook-gear permit must also contain the following information:

(A) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before July 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date on which the contract was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit, sufficient documentation to ascertain the different length, GRT, or NT. However, the upgrade must be completed within 1 year from the date on which the contract was signed.

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or

Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags, unless the vessel already possesses valid gillnet tags, as identified by the Regional Administrator. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining valid tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete only for the purposes of obtaining authorization to fish in the NE multispecies gillnet fishery and otherwise will be processed or issued without a gillnet authorization.

(B)—(C) [Reserved]

(iv) An application for a scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for a VMS general scallop permit, or full-time or part-time limited access scallop permit, or if opting to use a VMS unit, a copy of the vendor installation receipt or proof of vendor activation of the VMS from a NMFS-approved VMS vendor. NMFS-approved vendors are described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(vi) Prior to issuance of a limited access Atlantic herring permit, a VMS unit provided by a NMFS-approved vendor must be installed and NMFS must receive a notice from the vendor that the VMS is activated.

(vii) The owner of a vessel that has been issued a Tier 1 or Tier 2 limited access mackerel must submit a volumetric fish hold certification measurement, as described in paragraph (a)(5)(iii)(H) of this section, with the permit renewal application for the 2013 fishing year.

(d) *Fees*. The Regional Administrator may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance*. (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in § 648.7;

(ii) The application was not received by the Regional Administrator by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) An applicant for a limited access multispecies combination vessel or individual DAS permit, a limited access scallop permit (except an occasional scallop permit), an LAGC scallop permit, or electing to use a VMS, has

failed to meet all of the VMS requirements specified in §§ 648.9 and 648.10; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Change in permit information.* Any change in the information specified in paragraphs (c)(2) or (c)(3) of this section must be submitted by the applicant in writing to the Regional Administrator within 15 days of the change, or the permit is void.

(g) *Expiration.* A permit expires upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (f) of this section. However, the Regional Administrator may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Administrator.

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

(j) *Reissuance.* A permit may be reissued by the Regional Administrator when requested in writing, stating the need for reissuance, the name of the vessel (if applicable), and the fishing permit number assigned. An application for the reissuance of a permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(l) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer. Permits must be maintained in legible condition.

(m) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

(n) *Federal grant awards.* The Regional Administrator may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, issued pursuant to this section, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; golden tilefish or blueline tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued

pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(b) *Operator permit application*. Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Administrator. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition*. Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under §648.4, unless exempted from such requirements under §648.12. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements*. An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees*. Same as §648.4(d).

(f) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration*. Same as §648.4(g).

(h) *Duration*. A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent, color, passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer*. Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in permit application information*. Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration*. Same as §648.4(i).

(m) *Display*. Any permit issued under this part must be maintained in legible condition and displayed for inspection

upon request by any authorized officer or NMFS official.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 648.6 Dealer/processor permits.

(a) *General.* (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, golden tilefish, blueline tilefish, and black sea bass; Atlantic surfclam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species.

(2) *At-sea processors*—(i) *At-sea mackerel processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess, and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

(ii) *Atlantic herring at-sea processing permit.* A vessel of the United States, including a vessel that is >165 ft (50.3 m) length overall, or >750 GRT (680.4 mt), is eligible to obtain an Atlantic herring at-sea processing permit to receive and process Atlantic herring subject to the U.S. at-sea processing (USAP) allocation published by the Regional Administrator pursuant to § 648.200. Such a vessel may not receive and process Atlantic herring caught in or from the EEZ unless the vessel has been issued and has on board an Atlantic herring at-sea processing permit.

(iii) *Reporting requirements.* An at-sea processor receiving Atlantic mackerel or Atlantic herring is subject to dealer reporting requirements specified in § 648.7(a).

(b) *Dealer/processor permit applications.* Same as § 648.5(b).

(c) *Information requirements.* Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surfclam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers.

(d) *Fees.* Same as § 648.4(d).

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Same as § 648.4(g).

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified

under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as required by paragraph (j) of this section.

(h) *Reissuance*. Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer*. Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information*. Same as § 648.5(k).

(k) *Alteration*. Same as § 648.4(i).

(l) *Display*. Same as § 648.5(m).

(m) *Federal versus state requirements*. If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions*. Same as § 648.4(m).

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*. (1) Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The dealer reporting requirements specified in this paragraph (a)(1) for dealers purchasing or receiving for a commercial purpose Atlantic chub mackerel are effective through December 31, 2020. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information*. All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions*. The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Greater Atlantic Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Greater Atlantic Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in

§ 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(2) *System requirements.* All persons required to submit reports under paragraph (a)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal dealer permit holders.

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surfclam and ocean quahog processors and dealers whose plant processing capacities change more than 10 percent during any year shall notify the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

(4) [Reserved]

(b) *Vessel owners or operators*—(1) *Fishing vessel trip reports*—(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. The reporting requirements specified in this paragraph (b)(1)(i) for an owner or operator of a vessels fishing for, possessing, or landing Atlantic chub mackerel are effective through December 31, 2020. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (*i.e.*, less than 23 inches (58.42 cm), total length) or ''large'' (*i.e.*, 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

(ii) *Surfclam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surfclam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surfclam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Administrator, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surfclams and ocean quahogs discarded, and allocation permit number.

(iii) *Charter/Party vessel permit owners and operators.* The owner or operator of any fishing vessel that holds a Federal

charter/party (for-hire) permit to fish for Atlantic bluefish, black sea bass, scup, summer flounder, tilefish, Atlantic mackerel, squid, and/or butterfish, when on a trip carrying passengers for hire, must submit the required Vessel Trip Report by electronic means. This report must be submitted through a software application approved by NMFS, and must contain all applicable information outlined in paragraph (b)(1)(i) of this section.

(2) *IVR system reports*—(i) *Atlantic herring owners or operators issued an All Areas open access permit.* The owner or operator of a vessel issued an All Areas opn 9access permit to fish for herring must report catch (retained and discarded) of herring via an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(ii) [Reserved]

(3) *VMS Catch Reports*—(i) *Atlantic herring owners or operators issued a limited access permit or Areas 2/3 open access permit.* The owner or operator of a vessel issued a limited access permit or Areas 2/3 open access permit to fish for herring must report catch (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Additionally, the owner or operator of a vessel issued a limited access permit or Areas 2/3 open access permit to fish for herring using midwater trawl or bottom trawl gear must report daily via VMS the estimated total amount of all species retained (in pounds, landed weight) by statistical area for use in tracking catch against catch caps (haddock, river herring and shad) in the herring fishery. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr (9:00 a.m.) of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit or Areas 2/3 open access permit must submit a catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) Atlantic herring VMS reports are not required from Atlantic herring carrier vessels.

(C) *Reporting requirements for vessels transferring herring at sea.* The owner or operator of a vessel issued a limited access permit to fish for herring that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel transfers catch to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report

all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued limited access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a daily VMS catch report for the amount of herring each vessel catches.

(ii) *Atlantic mackerel owners or operators.* The owner or operator of a vessel issued a limited access mackerel permit must report catch (retained and discarded) of mackerel daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year mackerel was caught; total pounds of mackerel retained and total pounds of all fish retained. Daily mackerel VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if mackerel caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(iii) *Longfin squid moratorium permit owners or operators.* The owner or operator of a vessel issued a longfin squid moratorium permit must report catch (retained and discarded) of longfin squid daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year longfin squid was caught; total pounds longfin squid retained and total pounds of all fish retained. Daily longfin squid VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if longfin squid caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port. Information that may be considered unascertainable prior to entering port includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

(d) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections, all persons required to submit reports under this part must make immediately available for inspection copies of reports, and all records upon which those reports are or will be based, that are required to be submitted or kept under this part.

(e) *Record retention*—(1) *Dealer records.* Any record, as defined in § 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and made available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business.

(2) *VTRs.* Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year, and must be retained for a total of 3 years after the date the fish were last possessed, landed, and sold.

(3) *At-sea monitor reports.* Any record, as defined in § 648.2, related to fish observed by an at-sea monitor, including any reports provided to NMFS, sector managers, or another third-party service provider specified in paragraph (h) of this section, must be retained and made available for immediate review for a total of 3 years after the date the

fish were first observed. At-sea monitor providers must retain the required records and reports at their principal place of business.

(f) *Submitting reports*—(1) *Dealer or processor reports.* (i) Detailed reports required by paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(ii) [Reserved]

(iii) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) may be submitted after the detailed weekly report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.

(v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) of this section must be submitted with the detailed report, as required under paragraphs (f)(1)(i) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(vi) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* (i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate.

(ii) Surfclam and ocean quahog log reports, required by paragraph (b)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

(iii) Charter/Party vessel electronic log reports, required by paragraph (b)(1)(iii) of this section, must be submitted within 48 hours after entering port at the conclusion of a trip.

(3) *At-sea purchasers and processors.* With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

(h) *At-sea monitor/electronic monitoring reports.* Any at-sea monitor assigned to observe a sector trip and any third-party service provider analyzing data from electronic monitoring equipment

deployed on a sector trip must submit reports on catch, discard, and other data elements specified by the Regional Administrator to NMFS, the sector manager, and monitoring contractor, as instructed by the Regional Administrator.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.8 Vessel identification.

(a) *Vessel name and official number*. Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

(1) Affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals*. Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner*. The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking*. Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surfclam or ocean quahog vessels*. Instead of complying with paragraph (a) of this section, surfclam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

[61 FR 34968, July 3, 1996, as amended at 76 FR 60649, Sept. 29, 2011]

§ 648.9 VMS vendor and unit requirements.

(a) *Approval*. The type-approval requirements for VMS MTUs and MCSPs for the Greater Atlantic Region are those as published by the NMFS Office of Law Enforcement (OLE) in the FEDERAL REGISTER, and are available upon request. Both the national type-approval requirements at 50 CFR part 600, subpart Q and any established regional standards must be met in order to receive approval for use in the Greater Atlantic Region. The NMFS OLE Director shall approve all MTUs, MCSPs, and bundles including those operating in the Greater Atlantic Region.

(b) *Maintenance*. Once approved, VMS units must maintain the minimum standards for which they were approved in the type approval requirements. Any changes made to the original submission for approval of an MTU or MCSP by NMFS must follow the procedures outlined in the type approval requirements.

(c) *Notification*. A list of approved VMS vendors will be published on the Northeast Regional Office Web site and in each proposed and final rule for implementing or modifying VMS requirements for specific fisheries.

(d) *Revocations*. Revocation procedures for type-approvals are at 50 CFR 600.1514. In the event of a revocation, NMFS will provide information to affected vessel owners as explained at 50 CFR 600.1516. In these instances, vessel

owners may be eligible for the reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

[74 FR 20530, May 4, 2009, as amended at 79 FR 77410, Dec. 24, 2014]

§ 648.10 VMS and DAS requirements for vessel owners/operators.

(a) *VMS Demarcation Line*. The VMS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Administrator upon request):

VMS DEMARCATION LINE

Description	N. lat.	W. long.
1. Northern terminus point (Canada landmass)	45°03′	66°47′
2. A point east of West Quoddy Head Light	44°48.9′	66°56.1′
3. A point east of Little River Light	44°39.0′	67°10.5′
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6′	68°10.8′
5. Isle au Haut Light	44°03.9′	68°39.1′
6. A point south of Monhegan Island	43°43.3′	69°18.6′
7. Pemaquid Point Light	43°50.2′	69°30.4′
8. A point west of Halfway Rock	43°38.0′	70°05.0′
9. A point east of Cape Neddick Light	43°09.9′	70°34.5′
10. Merrimack River Entrance "MR" Whistle Buoy	42°48.6′	70°47.1′
11. Halibut Point Gong Buoy "1AHP"	42°42.0′	70°37.5′
12. Connecting reference point	42°40′	70°30′
13. Whistle Buoy "2" off Eastern Point	42°34.3′	70°39.8′
14. The Graves Light (Boston)	42°21.9′	70°52.2′
15. Minots Ledge Light	42°16.2′	70°45.6′
16. Farnham Rock Lighted Bell Buoy	42°05.6′	70°36.5′
17. Cape Cod Canal Bell Buoy "CC"	41°48.9′	70°27.7′
18. A point inside Cape Cod Bay	41°48.9′	70°05′
19. Race Point Lighted Bell Buoy "RP"	42°04.9′	70°16.8′
20. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0′	70°06.2′
21. Connecting point, off Nauset Light	41°50′	69°53′
22. A point south of Chatham "C" Whistle Buoy	41°38′	69°55.2′
22. A point in eastern Vineyard Sound	41°30′	70°33′
24. A point east of Martha's Vineyard	41°22.2′	70°24.6′
25. A point east of Great Pt. Light, Nantucket	41°23.4′	69°57′
26. A point SE of Sankaty Head, Nantucket	41°13′	69°57′
27. A point west of Nantucket	41°15.6′	70°25.2′
28. Squibnocket Lighted Bell Buoy "1"	41°15.7′	70°46.3′
29. Wilbur Point (on Sconticut Neck)	41°35.2′	70°51.2′
30. Mishaum Point (on Smith Neck)	41°31.0′	70°57.2′
31. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7′	71°13.4′
32. Point Judith Lighted Whistle Buoy "2"	41°19.3′	71°28.6′
33. A point off Block Island Southeast Light	41°08.2′	71°32.1′
34. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0′	72°28.6′
35. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5′	73°55.0′
36. Barnegat Lighted Gong Buoy "2"	39°45.5′	73°59.5′
37. A point east of Atlantic City Light	39°21.9′	74°22.7′
38. A point east of Hereford Inlet Light	39°00.4′	74°46′
39. A point east of Cape Henlopen Light	38°47′	75°04′
40. A point east of Fenwick Island Light	38°27.1′	75°02′
41. A point NE of Assateague Island (VA)	38°00′	75°13′
42. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0′	75°33.7′
43. A point NE of Cape Henry	36°55.6′	75°58.5′
44. A point east of Currituck Beach Light	36°22.6′	75°48′
45. Oregon Inlet (NC) Whistle Buoy	35°48.5′	75°30′
46. Wimble Shoals, east of Chicamacomico	35°36′	75°26′
47. A point SE of Cape Hatteras Light	35°12.5′	75°30′
48. Hatteras Inlet Entrance Buoy "HI"	35°10′	75°46′
49. Ocracoke Inlet Whistle Buoy "OC"	35°01.5′	76°00.5′
50. A point east of Cape Lookout Light	34°36.5′	76°30′
51. Southern terminus point	34°35′	76°41′

(b) *Vessels required to use VMS*. The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in, or as modified pursuant to § 648.9(a):

(1) A scallop vessel issued a Full-time or Part-time limited access scallop permit, or an LAGC scallop permit;

(2) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.59;

(3) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this section using VMS, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(4) A vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or catches regulated species or ocean pout while on a sector trip; or a vessel issued a limited access NE multispecies small vessel category or Handgear A permit that fishes in multiple stock areas pursuant to paragraph (k)(2) of this section;

(5) A vessel issued a surfclam (SF 1) or an ocean quahog (OQ 6) open access permit;

(6) Effective January 1, 2009, a vessel issued a Maine mahogany quahog (OQ 7) limited access permit, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*);

(7) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95; and

(8) A vessel issued a limited access herring permit (i.e., All Areas Limited Access Permit, Areas 2 and 3 Limited Access Permit, Incidental Catch Limited Access Permit), or a vessel issued an Areas 2/3 open access herring permit, or a vessel declaring an Atlantic herring carrier trip via VMS.

(9) A vessel issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit;

(10) A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit;

(11) A vessel issued an *Illex* squid moratorium permit; or

(12) A vessel issued a butterfish moratorium permit.

(c) *Operating requirements for all vessels*. (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) of this section, all vessels required to use VMS units, as specified in paragraph (b) of this section, must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section:

(i) At least every hour, 24 hr a day, throughout the year; or

(ii) At least twice per hour, 24 hr a day, throughout the year, for vessels issued a scallop permit.

(2) *Power-down exemption*. (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) The vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries or move from the dock/mooring until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter;

(C) [Reserved]

(D) The vessel has been issued an LAGC permit, is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must re-power the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator.

(ii) *Letter of exemption*—(A) *Application*. A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/

her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 consecutive hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance*. Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under this paragraph (c)(2), and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

(d) *Presumption*. If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was properly declared out of the scallop fishery, NE multispecies fishery, or monkfish fishery, as applicable, or while the vessel was not at sea.

(e) *VMS notifications*—(1) *VMS installation notification*. (i) The owner of such a vessel specified in paragraph (b) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under paragraph (b) of this section.

(ii) Vessel owners must confirm the VMS unit's operation and communications service to NMFS by calling the Office of Law Enforcement (OLE) to ensure that position reports are automatically sent to and received by NMFS OLE.

(iii) NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

(iv) If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the minimum performance criteria, and for the owner to provide documentation of such installation to the Regional Administrator.

(v) The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or that catches regulated species or ocean pout while on a sector trip, as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board, meeting all requirements of this part, prior to fishing under a NE multispecies DAS or under the provisions of an approved sector operations plan.

(vi) NMFS shall provide notification to all affected permit holders providing detailed information on procedures pertaining to VMS purchase, installation, and use.

(2) *Replacement VMS installations*. Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying, as described in this paragraph (e), that the new VMS unit is an operational approved system as described under § 648.9(a).

(3) *Access*. As a condition to obtaining a limited access scallop, multispecies, an Atlantic herring, a surfclam, ocean quahog, or Maine mahogany quahog permit; or as a condition of using a VMS unit; all vessel owners must allow

NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and to location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

(4) *Tampering.* Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that may affect the unit's ability to operate or signal properly, or to accurately compute or report the vessel's position.

(5) *Fishery participation notification.* (i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, monkfish, or any other fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip, unless the vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

(iii) DAS counting for a vessel that is under the VMS notification requirements of paragraph (b) of this section, with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in paragraph (e)(5) of this section, begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port, unless the vessel is declared into a limited access scallop DAS trip and, upon its return to port, declares out of the scallop fishery shoreward of the VMS Demarcation Line at or south of 39° N. lat., as specified in paragraph (f)(6) of this section, and lands in a port south of 39° N. lat.

(iv) For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

(v) The Regional Administrator may authorize or require the use of the call-in system instead of the use of VMS, as described under paragraph (h) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hour prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by transmitting the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, LAGC scallop fishery, NGOM Management Program, or will be fishing outside of the scallop fishery under the requirements of its other Federal permits, or that the vessel will be steaming to another location prior to commencing its fishing trip by transmitting a ''declared out of fishery'' VMS code. If the owner or authorized representative of a scallop vessel declares out of the fishery for

the steaming portion of the trip, the vessel cannot possess, retain, or land scallops, or fish for any other fish. Prior to commencing the fishing trip following a ''declared out of fishery'' trip, the owner or authorized representative must notify the Regional Administrator by transmitting the appropriate VMS code, before first crossing the VMS Demarcation Line, that the vessel will be participating in the scallop DAS program, Area Access Program, NGOM Management Program, or LAGC scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery by notifying the Regional Administrator through the VMS. If the vessel has not fished for any fish (*i.e.*, steaming only), after declaring out of the fishery, leaving port, and steaming to another location, the owner or authorized representative of an IFQ scallop vessel may declare into the IFQ fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line. An IFQ scallop vessel that is fishing north of 42°20′ N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section. After declaring out of the fishery, leaving port, and steaming to another location, if the IFQ scallop vessel has not fished for any fish (*i.e.*, steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(2) *NGOM scallop fishery.* A NGOM scallop vessel is deemed to be fishing in Federal waters of the NGOM management area and will have its landings applied against the LAGC portion of the NGOM management area TAC, specified in § 648.62(b)(1), unless:

(i) Prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops while under such a declaration. After declaring out of the fishery, leaving port, and steaming to another location, if the NGOM scallop vessel has not fished for any other fish (i.e., steaming only), the vessel may declare into the NGOM fishery without entering another port by making a declaration before first crossing the VMS Demarcation Line.

(ii) The vessel has specifically declared into the state-only NGOM fishery, thus is fishing exclusively in the state waters portion of the NGOM management area.

(3) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery.

(4) *Catch reports.* (i) The owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine RSA trips, and trips accompanied by a NMFS-approved observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) VTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept;

(D) Total pounds of all fish kept.

(ii) *Scallop Pre-Landing Notification Form for IFQ and NGOM vessels.* A vessel issued an IFQ or NGOM scallop permit must report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where

no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification Form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification Form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hours prior to arrival, or, if fishing ends less than 6 hours before arrival, immediately after fishing ends. If scallops will be landed, the report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the number of bushels of in-shell scallops to be landed, the estimated time of arrival in port, the landing port and state where the scallops will be offloaded, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and whether any scallops were caught in the NGOM. If no scallops will be landed, a vessel issued an IFQ or NGOM scallop permit must provide only the vessel's captain/operator's permit number, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and confirmation that no scallops will be landed. A vessel issued an IFQ or NGOM scallop permit may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting.

(iii) *Scallop Pre-Landing Notification Form for limited access vessels fishing on Scallop Access Area trips.* A limited access vessel on a declared Sea Scallop Access Area trip must report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on each access area trip, including declared access area trips where no scallops were landed. The report must be submitted no less than 6 hours before arrival, or, if fishing ends less than 6 hours before arrival, immediately after fishing ends. If scallops will be landed, the report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the number of bushels of in-shell scallops to be landed, the estimated time of arrival, the landing port and state where the scallops will be offloaded, and the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer). If no scallops will be landed, a limited access vessel on a declared Sea Scallop Access Area trip must provide only the vessel's captain/operator's permit number, the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer), and confirmation that no scallops will be landed. A limited access scallop vessel may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting. A vessel may not offload its catch from a Sea Scallop Access Area trip at more than one location per trip.

(iv) *Scallop Pre-Landing Notification Form for limited access vessels on a declared DAS trip landing scallops at ports located at or south of 39° N. lat.* In order to end a declared Sea Scallop DAS trip and steam south of 39° N. lat., a limited access vessel must first report through VMS, using the Scallop Pre-Landing Notification Form, the amount of any scallops kept on its DAS trip. Upon crossing shoreward of the VMS Demarcation Line at or south of 39° N. lat., the Scallop Pre-Landing Notification form must be submitted. The report must include the vessel operator's permit number, the amount of scallop meats in pounds to be landed, the estimated time of arrival in port, the landing port and state where the scallops will be offloaded, and the VTR serial number recorded from that trip's VTR (the same VTR serial number as reported to the dealer). Prior to crossing seaward of the VMS Demarcation Line for the transit to a southern port at or

south of 39° N. lat., the vessel must declare out of the scallop fishery. A limited access scallop vessel may provide a corrected report. If the report is being submitted as a correction of a prior report, the information entered into the notification form will replace the data previously submitted in the prior report. Submitting a correction does not prevent NMFS from pursuing an enforcement action for any false reporting.

(5) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b)(1) must comply with the exemption requirements and notify the Regional Administrator by VMS notification or by call-in notification as follows:

(i) *VMS notification for scallop vessels fishing under exemptions.* (A) Notify the Regional Administrator, via their VMS, prior to each trip of the vessel under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(B) Notify the Regional Administrator, via their VMS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(ii) *Call-in notification for scallop vessels fishing under exemptions.* (A) Notify the Regional Administrator by using the call-in system and providing the following information at least 7 days prior to fishing under the exemption:

(*1*) Owner and caller name and address;

(*2*) Vessel name and permit number; and

(*3*) Beginning and ending dates of the exemption period.

(B) Remain under the exemption for a minimum of 7 days.

(C) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Administrator of early withdrawal from the program by calling the call-in system, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hr after notification of early withdrawal is received by the Regional Administrator.

(D) The Regional Administrator will furnish a phone number for call-ins upon request.

(E) Such vessels must comply with the VMS notification requirements specified in paragraph (e) of this section by notifying the Regional Administrator by entering the appropriate VMS code that the vessel is fishing outside of the scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(6) *Limited access scallop vessels fishing under the DAS program and landing scallops at ports south of 39° N. Lat.* If landing scallops at a port located at or south of 39° N. lat., a limited access vessel participating in the scallop DAS program may end its DAS trip once it has crossed shoreward of the VMS Demarcation Line at or south of 39° N. lat. by declaring out of the scallop fishery and submitting the Scallop Pre-Landing Notification Form, as specified at paragraph (f)(4)(iv) of this section. Once declared out of the scallop fishery, and the vessel has submitted the Scallop Pre-Landing Notification Form, the vessel may cross seaward of the VMS Demarcation Line and steam to a port at or south of 39° N. lat., to land scallops while not on a DAS. Such vessels that elect to change their declaration to steam to ports with scallops onboard and not accrue DAS must comply with all the requirements at § 648.53(f)(3).

(g) *VMS notification requirements for other fisheries.* (1) The owner or authorized representative of a vessel that is required to or elects to use VMS, as specified in paragraph (b) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip except:

(i) If notified by letter, pursuant to paragraph (e)(1)(iv) of this section, or

(ii) The vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

(2) Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the

vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs.

(3) A vessel operator cannot change any aspect of a vessel's VMS activity code outside of port, except as follows:

(i) An operator of a NE multispecies vessel is authorized to change the category of NE multispecies DAS used (*i.e.*, flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A).

(ii) An operator of a vessel issued both a NE multispecies permit and a monkfish permit are authorized to change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the to the NE multispecies DAS usage requirements under § 648.92(b)(1)(i), during the course of a trip, as provided at § 648.92(b)(1)(iii)(A).

(iii) The vessel carries onboard a valid limited access or LAGC scallop permit, has declared out of the fishery in port, and is steaming to another location, pursuant to paragraph (f) of this section.

(4) VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

(h) *Call-in notification*. The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.59, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

(i) Owner and caller name and phone number;

(ii) Vessel name and permit number;

(iii) Type of trip to be taken;

(iv) Port of departure; and

(v) That the vessel is beginning a trip.

(2) A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(3) Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a monkfish Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i) are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (h) for those monkfish DAS when there is not a concurrent NE multispecies DAS.

(4) The vessel's confirmation numbers for the current and immediately prior NE multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer immediately upon request.

(5) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information:

(i) Owner and caller name and phone number;

(ii) Vessel name and permit number;

(iii) Port of landing; and

(iv) That the vessel has ended its trip.

(6) A DAS ends when the call has been received and confirmation has

been given by the Regional Administrator, or when a vessel enters port at the end of a fishing trip, whichever occurs later, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(7) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(8) Regardless of whether a vessel's owner or authorized representative provides correct notification as required by paragraphs (e) through (h) of this section, a vessel meeting any of the following descriptions shall be deemed to be in its respective fishery's DAS or Scallop Access Area Program for the purpose of counting DAS or scallop access area trips/pounds, and, shall be charged DAS from the time of sailing to landing:

(i) Any vessel issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops;

(ii) A vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless otherwise specified in § 648.59(d)(2);

(iii) Any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops;

(iv) Any vessel issued a limited access scallop and LAGC IC scallop permit that possesses or lands more than 40 lb (18.1 kg) of scallops;

(v) Any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and

(vi) Any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c).

(9) *Vessels electing to use VMS.* (i) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit must use the call-in system specified in paragraph (h) of this section, unless the owner of such vessel has elected to provide the notifications required by paragraph (g) of this section, through VMS as specified under paragraph (h)(9)(ii) of this section. Any vessel issued a limited access monkfish or an Occasional scallop permit that has elected to provide notifications through VMS must continue to provide notifications through VMS for the entire fishing year.

(ii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (e) of this section using the VMS specified in paragraph (b) of this section. For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (e)(2)(i) through (v) of this section. This paragraph (h) does not apply to vessels electing to use the VMS.

(i) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (h) of this section, instead of using the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, e-mail, or other appropriate means.

(j) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if required by the Regional Administrator) and provide the following information:

(i) Vessel name and permit number;

(ii) Owner and caller name and phone number; and

(iii) Commencement date of the 20-day period.

(2) *Gillnet call-in*. A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (k)(1) of this section.

(k) *Area-specific reporting requirements for NE multispecies vessels*—(1) *Reporting requirements for all limited access NE multispecies vessel owners or operators*. In addition to any other reporting requirements specified in this part, the owner or operator of any vessel issued a limited access NE multispecies permit on either a common pool or sector trip must declare the following information via VMS or IVR, as instructed by the Regional Administrator:

(i) *Broad stock area(s) to be fished*. To fish in any of the broad stock areas, the vessel owner or operator must declare his/her intent to fish within one or more of the NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, prior to leaving port at the start of a fishing trip;

(ii) *VTR serial number*. On its return to port, prior to crossing the VMS demarcation line, as defined at § 648.10, the vessel owner or operator must provide the VTR serial number for the first page of the VTR for that particular trip, or other applicable trip ID specified by NMFS; and

(iii) *Trip-start hail report*. If instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c), the operator of a vessel must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or NMFS of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; an estimate of the date and time of arrival to port; and any other information as instructed by the Regional Administrator. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. The trip-start hail report may be submitted via VMS or some other method, as instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c). If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the sector manager or NMFS, the operator must contact the intended receiver to confirm the trip-start hail report via an independent back-up system, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-start hail report with any other applicable reporting requirements..

(iv) *Trip-end hail report*. Upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-end hail reports with any other applicable reporting requirements.

(2) *Reporting requirements for NE multispecies vessel owners or operators fishing in more than one broad stock area per trip.* Unless otherwise provided in this paragraph (k)(2), the owner or operator of any vessel issued a NE multispecies limited access permit that has declared its intent to fish within multiple NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, on the same trip must submit a hail report via VMS providing a good-faith estimate of the amount of each regulated species retained (in pounds, landed weight) and the total amount of all species retained (in pounds, landed weight), including NE multispecies and species managed by other FMPs, from each statistical area. This reporting requirement is in addition to the reporting requirements specified in paragraph (k)(1) of this section and any other reporting requirements specified in this part. The report frequency is detailed in paragraphs (k)(2)(i) and (ii) of this section.

(i) *Vessels declaring into GOM Stock Area and any other stock area.* A vessel declared to fish in the GOM Stock Area, as defined in paragraph (k)(3)(i) of this section, and any other stock area defined in paragraphs (k)(3)(ii) through (iv) of this section, must submit a daily VMS catch report in 24-hr intervals for each day by 0900 hr of the following day. Reports are required even if groundfish species caught that day have not yet been landed.

(ii) *Vessels declaring into multiple broad stock areas not including GOM Stock Area.* A vessel declared into multiple stock areas defined in paragraphs (k)(3)(ii) through (iv) of this section, not including the GOM Stock Area I defined in paragraph (k)(3)(i) of this section, must submit a trip-level report via VMS prior to crossing the VMS demarcation line, as defined in § 648.10, upon its return to port following each fishing trip on which regulated species were caught, as instructed by the Regional Administrator.

(iii) The Regional Administrator may adjust the reporting frequency specified in paragraph (k)(2) of this section.

(iv) *Exemptions from broad stock area VMS reporting requirements.* (A) A vessel is exempt from the reporting requirements specified in paragraph (k)(2) of this section if it is fishing in a special management program, as specified in § 648.85, and is required to submit daily VMS catch reports consistent with the requirements of that program.

(B) The Regional Administrator may exempt vessels on a sector trip from the reporting requirements specified in this paragraph (k)(2) if it is determined that such reporting requirements would duplicate those specified in § 648.87(b).

(3) *NE multispecies broad stock areas.* For the purposes of the area-specific reporting requirements listed in paragraph (k)(1) of this section, the NE multispecies broad stock areas are defined in paragraphs (k)(3)(i) through (iv) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Stock Area 1.* The GOM Stock Area 1 is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GOM STOCK AREA 1

Point	N. latitude	W. longitude
G1	(1)	(1)
CII3	(1)	67°20′
G6	42°20′	67°20′
G10	42°20′	70°00′
G9	(2)	70°00′

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary.
[2] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.

(ii) *Inshore GB Stock Area 2.* The inshore GB Stock Area is defined by straight lines connecting the following points in the order stated:

INSHORE GB STOCK AREA 2

Point	N. latitude	W. longitude
G9	(1)	70°00′
G10	42°20′	70°00′
IGB1	42°20′	68°50′
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

[1] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.
[2] South-facing shoreline of Cape Cod, MA.

(iii) *Offshore GB Stock Area 3.* The Offshore GB Stock Area 3 is bounded on

the east by the U.S./Canadian maritime boundary and defined by straight lines connecting the following points in the order stated:

OFFSHORE GB STOCK AREA 3

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
G6	42°20′	67°20′
CII3	(1)	67°20′
SNE2	39°00′	(1)
SNE3	39°00′	69°00′
SNE4	39°50′	69°00′
SNE5	39°50′	68°50′
IGB1	42°20′	68°50′

[1] The U.S.-Canada maritime boundary as it intersects with the EEZ.

(iv) *SNE/MA Stock Area 4*. The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

SNE/MA STOCK AREA 4

Point	N. latitude	W. longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNE4	39°50′	68°50′
SNE3	39°50′	69°00′
SNE5	39°00′	69°00′
SNE6	39°00′	(2)

[1] South-facing shoreline of Cape Cod, MA.
[2] The U.S.-Canada maritime boundary as it intersects with the EEZ.

(l) [Reserved]

(m) *Atlantic herring VMS notification requirements*. (1) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit intending to declare into the herring fishery or a vessel issued an Atlantic herring permit and intending to declare an Atlantic herring carrier trip via VMS must notify NMFS by declaring a herring trip with the appropriate gear code prior to leaving port at the start of each trip in order to harvest, possess, or land herring on that trip.

(2) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit or a vessel that declared an Atlantic herring carrier trip via VMS must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish. The Regional Administrator may adjust the prior notification minimum time through publication of a document in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(n) *Limited access Atlantic mackerel VMS notification requirements*. (1) A vessel issued a limited access Atlantic mackerel permit intending to declare into the mackerel fishery must notify NMFS by declaring a mackerel trip prior to leaving port at the start of each trip in order to harvest, possess, or land mackerel on that trip.

(2) A vessel issued a limited access Atlantic mackerel permit intending to land more than 20,000 lb (9.07 mt) of mackerel must notify NMFS of the time and place of offloading at least 6 hr prior prior to arrival, or, if fishing ends less than 6 hours before arrival, immediately upon leaving the fishing grounds. The Regional Administrator may adjust the prior notification minimum time through publication in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(o) *Longfin squid VMS notification requirement*. A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit intending to harvest, possess, or land more than 2,500 lb (1.13 mt) of longfin squid on that trip must notify NMFS by declaring a longfin squid trip before leaving port at the start of each trip.

(p) *Illex squid VMS notification requirement*. A vessel issued an *Illex* squid moratorium permit intending to harvest, possess, or land 10,000 lb (4,536 kg) or more of *Illex* squid on that trip must notify NMFS by declaring an *Illex* squid trip before leaving port at the start of each trip.

[74 FR 20530, May 4, 2009]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.10, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

(b) If requested by the Regional Administrator to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Administrator, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Administrator may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

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

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

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/ observers involved.

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

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Administrator.

(g) *Atlantic sea scallop observer program*—(1) *General*. Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access and LAGC IFQ permits are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures—(i) Limited access vessels*. Limited access vessel owners, operators, or managers shall notify NMFS/NEFOP by telephone not more than 10 days prior to the beginning of any scallop trip of the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(ii) *LAGC IFQ vessels*. LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any open area or access area scallop trip and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

(3) *Selection of scallop trips for observer coverage*. Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective scallop trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date; and

(4) *Procurement of observer services by scallop vessels*. (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/NEFOP from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list

of approved observer service providers shall be posted on the NMFS/NEFOP Web site at *http://www.nefsc.noaa.gov/femad/fsb/*. The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 48 hr of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met. A vessel may not begin the trip without being issued a waiver.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas or additional catch per open area or access area trip for LAGC IFQ trips in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

(i) Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS or IFQ scallop trip consistent with paragraphs (g)(5)(i)(A) and (B), respectively, of this section.

(A) *Access Area trips*. (*1*) For purposes of determining the daily rate for an observed scallop trip on a limited access vessel in a Sea Scallop Access Area when that specific Access Area's observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time at sea equals 27 hr, which would equate to 2 full ''days.''

(*2*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for an observed scallop trip on a limited access vessel taken after NMFS has announced the industry-funded observer set-aside in that specific Access Area has been fully utilized, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(*3*) For purposes of determining the daily rate in a specific Sea Scallop Access Area for observed scallop trips on an LAGC vessel, regardless of the status of the industry-funded observer set-aside, a service provider may charge a vessel owner for no more than the time an observer boards a vessel until the vessel disembarks (dock to dock), where ''day'' is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 p.m. and lands on July 3 at 1 a.m., the time spent at sea equals 27 hr, which would equate to 1 day and 3 hr.

(B) *Open area scallop trips*. For purposes of determining the daily rate for an observed scallop trip for DAS or LAGC IFQ open area trips, regardless of the status of the industry-funded observer set-aside, a service provider shall charge dock to dock where ''day'' is defined as a 24-hr period, and portions of the other days would be prorated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on

the July 1st at 10 p.m. and lands on July 3rd at 1 a.m., the time at sea equals 27 hr, so the provider would charge 1 day and 3 hr.

(ii) NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in a Sea Scallop Access Area or on an open area LAGC IFQ trips for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified through the Small Entity Compliance Guide of any DAS accrual rate changes and any changes in additional pounds of scallops determined by the Regional Administrator to be necessary. NMFS shall notify vessel owners and observer providers of any adjustments.

(iii) Owners of scallop vessels shall pay observer service providers for observer services within 45 days of the end of a fishing trip on which an observer deployed.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General*. An entity seeking to provide observer services must apply for and obtain approval from NMFS following submission of a complete application. A list of approved observer service providers shall be distributed to vessel owners and shall be posted on the NMFS/NEFOP Web site at: *www.nefsc.noaa.gov/femad/fsb/*.

(2) [Reserved]

(3) *Contents of application*. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal conviction(s), Federal contract(s) they have had and the performance rating they received on the contracts, and previous decertification action(s) while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, whether contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified, observers on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/NEFOP Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation*. (i) NMFS shall review and evaluate each application submitted under paragraph (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NMFS/NEFOP Web site specified in paragraph (h)(1) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers*. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a fishing vessel, unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a fishing vessel or to attend an appropriate NMFS/NEFOP observer training class;

(C) The required observer equipment, in accordance with equipment requirements listed on the NMFS/NEFOP Web site specified in paragraph (h)(1) of this section, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order,

such as a mobile phone, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal mobile phone, or other device, for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must be accessible 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the appropriate fishery.

(iv) *Observer deployment limitations.* (A) A candidate observer's first four deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/NEFOP prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(B) Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP minimum eligibility standards for observers as described on the NMFS/NEFOP Web site.

(vii) *Reports*—(A) *Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (including Open Area or Access Area for sea scallop trips) an observer has been deployed, within 24 hours of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hours of landing. OBSCON data are to be submitted electronically or by other means specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 4 business days of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, *e.g.*, failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-

week period must contact NMFS upon his or her return.

(E) *Observer availability report*. The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports*. The observer service provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hours of the event or within 24 hours of learning of the event.

(G) *Observer status report*. The observer service provider must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is ''in service,'' indicating when the observer has requested leave and/or is not currently working for an industry funded program.

(H) *Vessel contract*. The observer service provider must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) *Observer contract*. The observer service provider must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) *Additional information*. The observer service provider must submit to NMFS/NEFOP, if requested, copies of any information developed and/or used by the observer provider and distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(viii) *Refusal to deploy an observer*. (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 48 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746 of this chapter.

(C) The observer service provider may refuse to deploy an observer on a fishing vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest*. An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers*. An observer service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall

specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification*. (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program Web site: *www.nmfs.noaa.gov/op/pds/categories/science_and_technology.html*.

(2) *Observer training*. In order to be deployed on any fishing vessel, a candidate observer must have passed an appropriate NMFS/NEFOP Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. A candidate observer's first four deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(3) *Observer requirements*. All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP Web site specified in paragraph (h)(1) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(v) Accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(4) *Probation and decertification.* NMFS may review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS/NEFOP Web site specified in paragraph (h)(1) of this section.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(4) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

(j) In the event that a vessel is requested by the Regional Administrator to carry a NMFS-certified fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector at-sea monitoring program specified in § 648.87(b)(1)(v) for the same trip, only the NMFS-certified fisheries observer is required to go on that particular trip.

(k) *NE multispecies observer coverage*—(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) *Vessel selection for observer coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if

a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (k)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the operator, owner, or manager of the vessel.

(l) *NE multispecies monitoring program goals and objectives.* Monitoring programs established for the NE multispecies are to be designed and evaluated consistent with the following goals and objectives:

(1) Improve documentation of catch:

(i) Determine total catch and effort, for each sector and common pool, of target or regulated species; and

(ii) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(2) Reduce the cost of monitoring:

(i) Streamline data management and eliminate redundancy;

(ii) Explore options for cost-sharing and deferment of cost to industry; and

(iii) Recognize opportunity costs of insufficient monitoring.

(3) Incentivize reducing discards:

(i) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(ii) Collect information by gear type to accurately calculate discard rates.

(4) Provide additional data streams for stock assessments:

(i) Reduce management and/or biological uncertainty; and

(ii) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(5) Enhance safety of monitoring program.

(6) Perform periodic review of monitoring program for effectiveness.

(m) *Atlantic herring observer coverage*—(1) *Pre-trip notification.* At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, a vessel issued a Limited Access Herring Permit or a vessel issued an Areas ⅔ Open Access Herring Permit on a declared herring trip or a vessel issued an All Areas Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), and herring carriers must provide notice of the following information to NMFS: Vessel name, permit category, and permit number; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; gear type; target species; and intended area of fishing, including whether the vessel intends to engage in fishing in the Northeast Multispecies Closed Areas (Closed Area I North (§ 648.81(c)(3)), Closed Area II (§ 648.81(a)(5)), Cashes Ledge Closure Area (§ 648.81(a)(3)), and Western GOM Closure Area (§ 648.81(a)(4))) at any point in the trip. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 12 hr prior to vessel departure from port.

(2) When vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, each vessel must provide to observers, when requested, the estimated weight of each species brought on board and the estimated weight of each species released on each tow.

(3) *Sampling requirements.* In addition to the requirements at § 648.11(d)(1) through (7), an owner or operator of a vessel issued a Limited Access Herring Permit on which a NMFS-approved observers is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and

grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(iv) Visual access to the net, the codend of the net, and the purse seine bunt and any of its contents after pumping has ended and before the pump is removed from the net. On trawl vessels, the codend including any remaining contents must be brought on board, unless bringing the codend on board is not possible. If bringing the codend on board is not possible, the vessel operator must ensure that the observer can see the codend and its contents as clearly as possible before releasing its contents.

(4) *Measures to address slippage.* (i) No vessel issued a limited access herring permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If a vessel issued any limited access herring permit slips catch, the vessel operator must report the slippage event on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch. Additionally, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iv) If a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit slips catch for any of the reasons described in paragraph (m)(4)(i) of this section, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(v) If catch is slipped by a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit for any reason not described in paragraph (m)(4)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

(n) *Atlantic mackerel, squid, and butterfish observer coverage*—(1) *Pre-trip notification.* (i) A vessel issued a limited access Atlantic mackerel permit, as specified at § 648.4(a)(5)(iii), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or email address for contact; and the date, time, port of departure, gear type, and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (n)(1)(iii) of this section.

(ii) A vessel that has a representative provide notification to NMFS as described in paragraph (n)(1)(i) of this section may only embark on a mackerel trip without an observer if a vessel representative has been notified by

NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specific mackerel trip, within 24 hr of the vessel representative's notification of the prospective mackerel trip, as specified in paragraph (n)(1)(i) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the mackerel trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing mackerel except as specified in paragraph (n)(1)(iii) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(iii) Trip limits: A vessel issued a limited access mackerel permit, as specified in § 648.4(a)(5)(iii), that does not have a representative provide the trip notification required in paragraph (n)(1)(i) of this section is prohibited from fishing for, possessing, harvesting, or landing more than 20,000 lb (9.07 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iv) If a vessel issued a limited access Atlantic mackerel permit, as specified in § 648.4(a)(5)(iii), intends to possess, harvest, or land more than 20,000 lb (9.07 mt) of mackerel per trip or per calendar day, and has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

(2) *Sampling requirements for limited access Atlantic mackerel or Tier 1 or 2 longfin squid, or butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or a longfin squid or butterfish moratorium permit on which a NMFS-approved observer is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(3) *Measures to address slippage.* (i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid or butterfish moratorium permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If a vessel issued any limited access Atlantic mackerel permit slips catch, the vessel operator must report the slippage event on the Atlantic mackerel and longfin squid daily VMS catch report and indicate the reason for slipping catch. Additionally, for a

vessel issued a limited Atlantic mackerel permit or a longfin squid or butterfish moratorium permit, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) If a vessel issued a limited access Atlantic mackerel permit slips catch for any of the reasons described in paragraph (n)(3)(i) of this section, the vessel operator must move at least 15 nm (27.8 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.8 km) from the slippage event location for the remainder of the fishing trip.

(iv) If catch is slipped by a vessel issued a limited access Atlantic mackerel permit for any reason not described in paragraph (n)(3)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surfclam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), O (skates), and P (Mid-Atlantic forage species and Atlantic chub mackerel) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC before approving any exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries, including exemptions for experimental fishing contributing to the development of new or expansion of existing fisheries for Mid-Atlantic forage species and Atlantic chub mackerel.

(a) The Regional Administrator may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surfclams or ocean quahogs will not require an allocation permit.

(d) *Temporary possession letter of authorization (LOA)*: The Regional Administrator (RA), or the RA's designee, may issue an LOA to eligible researchers on board federally permitted fishing vessels on which species of fish that otherwise could not be legally retained would be possessed temporarily for the purpose of collecting catch data. Under this authorization, such species of fish could be retained temporarily for data collection purposes, but shall be discarded as soon as practicable following data collection.

(1) *Eligible activities*. An LOA may be issued by the RA, or the RA's designee, to temporarily exempt a vessel, on which a qualified fishery research technician is collecting catch data, from

the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions.

(2) *Eligibility criteria.* Only personnel from the following bodies are eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

(3) *Application requirements.* To obtain a temporary possession LOA, an eligible applicant, as defined under paragraph (d)(2) of this section, is required to submit a complete application, which must contain the following information: The date of the application; the applicant's name, mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians will collect the data; a statement demonstrating the qualifications of the research technician that will collect the data; the species (target and incidental) expected to be harvested under the LOA; the proposed disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing will take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant is required to supply to NMFS the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.

[61 FR 58466, Nov. 15, 1996, as amended at 62 FR 37156, July 11, 1997; 65 FR 45852, July 26, 2000; 65 FR 77466, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49700, Aug. 19, 2003; 75 FR 1022, Jan. 8, 2010; 76 FR 60649, Sept. 29, 2011; 82 FR 40732, Aug. 28, 2017]

§ 648.13 Transfers at sea.

(a) Vessels issued a longfin squid, butterfish, or *Illex* squid moratorium permit and vessels issued a squid/butterfish incidental catch permit may transfer or attempt to transfer or receive longfin squid, *Illex* squid, or butterfish only if authorized in writing by the Regional Administrator through the issuance of a letter of authorization (LOA).

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel, except for vessels that have not been issued a Federal permit and fish exclusively in state waters.

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(d), for

every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(f) *Atlantic herring.* With the exception of transfers made to an at-sea processing vessel issued the required permit under § 648.6(a)(2)(ii), any person or vessel, including any vessel issued an Atlantic herring permit, is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, except as authorized in this paragraph (f), and in compliance with reporting requirements at § 648.7 (b)(2)(i)(D).

(1) *Personal use as bait.* (i) The operator of a vessel that is not issued an Atlantic herring permit may purchase and/or receive Atlantic herring at sea for personal use as bait, provided the vessel receiving the transfer does not have purse seine, midwater trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board;

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to another vessel for personal use as bait:

(A) Provided the transferring vessel is issued a letter of authorization to transfer fish. The operator of the transferring vessel must show the letter of authorization to a representative of the vessel receiving fish or any authorized officer upon request; and

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to fishing as specified in § 648.201.

(2) *Atlantic herring carrier vessels.* (i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it either is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii), or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS, consistent with the requirements at § 648.10(l)(1).

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area closed to directed fishing as specified in § 648.201.

(3) If a herring management area has been closed to fishing as specified in § 648.201, a vessel may not transfer Atlantic herring harvested from or in the area to an IWP or Joint Venture vessel.

(4) If the amount of herring transshipped to a Canadian transshipment vessel would cause the amount of the border transfer specified pursuant to § 648.200 to be exceeded, a vessel may not transfer Atlantic herring to a Canadian transshipment vessel permitted in accordance with Public Law 104–297.

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) of herring may be caught, transferred, received, or possessed at sea, or landed

per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area closed to directed fishing as specified in § 648.201.

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(h) *Skates*. (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels not issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit, provided:

(i) The transferring vessel possesses on board a valid letter of authorization issued by the Regional Administrator as specified under § 648.322(c); and

(ii) The transferring vessel and vessel owner or operator comply with the requirements specified at § 648.322(c).

(i) *Scup*. (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.

(2) The owner or operator of a vessel issued a Federal scup permit under § 648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:

(i) The transfer occurs between two vessels with Federal scup permits;

(ii) The transfer occurs seaward of a boundary line that begins at 40°50′ N. lat., 70°00′ W. long., and runs south to connect points at 40°15′ N. lat., 73°30′ W. long.; 37°50′ N. lat., 75°00′ W. long.; and 35°30′ N. lat., 75°00′ W. long.;

(iii) The donating and receiving vessels possess gear that meets the requirements at § 648.125(a)(2), (3), and (4) for commercial scup fishing gear;

(iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;

(v) There is only one transfer per fishing trip for the donor vessel;

(vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;

(vii) After removal of scup from the net by the donor vessel, the entire codend, with all its contents, is transferred to the receiving vessel;

(viii) Only scup in an amount not to exceed the possession limit are retained by the receiving vessel;

(ix) While fishing for scup, all other nets are stored and not available for immediate use as defined in § 648.2; and

(x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.14 Prohibitions.

(a) *General prohibitions*. It is unlawful for any person to do any of the following:

(1) Violate any provision of this part, the Magnuson-Stevens Act, or any regulation, notice, or permit issued under the Magnuson-Stevens Act, or any other statute administered by NOAA.

(2) Assist, aid, or abet in the commission of any act prohibited by the Magnuson-Stevens Act; or any regulation, notice, or permit issued under the Magnuson-Stevens Act; or any other statute administered by NOAA.

(3) Fail to report to the Regional Administrator within 15 days any change in the information contained in any permit or permit application.

(4) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(5) Make any false statement or provide any false information on, or in connection with, an application, declaration, record or report under this part.

(6) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, or other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel that does not hold a valid permit under this part, or are species included in the NE Multispecies Fishery Management Plan that were harvested by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area.

(8) Fail to comply with any sea turtle conservation measure specified in 50 CFR parts 222 and 223, including any sea turtle conservation measure implemented by notification in the FEDERAL REGISTER.

(9) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

(10) *Food safety program.* (i) Purchase, receive for a commercial purpose other than transport to a testing facility, or process; or attempt to purchase, receive for commercial purpose other than transport to a testing facility; or process, outside Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(ii) Land ocean quahogs outside Maine that are harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(iii)—(iv) [Reserved]

(v) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess Atlantic surfclams and ocean quahogs from the reopened portion of the Georges Bank Closed Area, as defined in § 648.76(a)(4), unless issued a Letter of Authorization, and fishing under the appropriate VMS declaration and under the terms and conditions of the PSP testing protocol, as specified in § 648.76(a)(4)(i).

(b) *Vessel and operator permits.* It is unlawful for any person to do any of the following:

(1) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Alter, erase, or mutilate any permit issued under this part or any document submitted in support of an application for any such permit.

(3) Operate or act as operator of a vessel that fishes for or possesses any species of fish regulated by this part, or that is issued a vessel permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(4) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access or moratorium permit under § 648.4(a) and that has had the horsepower or length overall of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(5) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit prior to the time the vessel has been reissued the applicable limited access or moratorium permit by NMFS.

(6) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4(a)(1)(i)(E), more than once during a permit year, unless the vessel has been rendered permanently inoperable.

(7) Purchase, possess, or receive from a vessel for a commercial purpose, other than solely for transport on land, any species of fish for which a vessel permit is required under this part, unless the vessel possesses a valid vessel permit issued under this part.

(8) Transfer, remove, or offload, for a commercial purpose; or attempt to transfer, remove, land, or offload, for a commercial purpose; at sea, any species regulated under this part, unless the transferring vessel has been issued and carries on board a valid LOA from the Regional Administrator, or is otherwise exempted, and the receiving vessel has been issued and has on board a valid Federal permit for the species that is being transferred.

(9) Fish for, possess, or retain fish, during a fishing trip, aboard a Federally permitted vessel that, in the absence of an emergency, has not been operating under its own power for the entire trip.

(10) Fish with bottom-tending gear within the Frank R. Lautenberg Deep-sea Coral Protection Area described at § 648.372, unless transiting pursuant to § 648.372(d), fishing lobster trap gear in accordance with § 697.21 of this chapter, or fishing red crab trap gear in accordance with § 648.264. Bottom-tending gear includes but is not limited to bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots and traps, and sink or anchored gill nets.

(11) If fishing with bottom-tending mobile gear, fish in, enter, be on a fishing vessel in, the EFH closure areas described in § 648.371, unless otherwise exempted.

(12) Unless otherwise exempted, fish in the Dedicated Habitat Research Areas defined in § 648.371.

(c) *Dealer permits.* It is unlawful for any person to do any of the following:

(1) Purchase, possess or receive for a commercial purpose; or attempt to purchase, possess or receive for a commercial purpose; other than solely for transport on land, any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part that fished exclusively in state waters, or pursuant to the § 648.17 NAFO Regulatory Area exemptions.

(2) Sell, barter, trade, or transfer; or attempt to sell, barter, trade, or transfer; other than solely for transport on land, any Atlantic herring, multispecies, or monkfish from a vessel that fished for such species in the EEZ, unless the dealer or transferee has a valid dealer permit issued under § 648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

(d) *VMS.* It is unlawful for any person to do any of the following:

(1) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, VMS unit, or VMS signal required to be installed on or transmitted by vessel owners or operators required to use a VMS by this part.

(2) Fail to submit the appropriate VMS activity code for the intended activity at the appropriate time, in accordance with § 648.10.

(3) Fail to comply with the appropriate VMS reporting requirements, as specified in § 648.10.

(e) *Observer program.* It is unlawful for any person to do any of the following:

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler conducting his or her duties; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

(2) Refuse to carry onboard a vessel an observer or sea sampler if requested to do so by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel as specified in § 648.11.

(4) Submit false or inaccurate data, statements, or reports.

(f) *Research and experimental fishing.* It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(g) *Squid, mackerel, and butterfish*—(1) *All persons.* Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person to do any of the following:

(i) *Possession and landing.* Take and retain, possess, or land more Atlantic mackerel, squid or butterfish than specified under, or after the effective date of, a notification issued under §§ 648.22 or 648.24(d).

(ii) *Transfer and purchase.* (A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; mackerel, squid, or butterfish caught by a vessel that has not been issued a Federal mackerel, squid, and butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(i) *General requirement.* Fail to comply with any measures implemented pursuant to subpart B of this part.

(ii) *Possession and landing.* (A) Possess more than the incidental catch allowance of longfin squid, unless issued a longfin squid moratorium permit.

(B) Possess more than the incidental catch allowance of *Illex* squid, unless issued an *Illex* squid moratorium permit.

(C) Possess more than the incidental catch allowance of mackerel, unless issued a Limited Access mackerel permit.

(D) Take and retain, possess, or land mackerel, squid, or butterfish in excess of a possession limit specified in § 648.26.

(E) Possess more than 5,000 lb (2.27 mt) of butterfish, unless the vessel meets the minimum mesh requirements specified in § 648.23(a).

(F) Take and retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

(G) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 20,000 lb (9.08 mt) of mackerel per trip; or land, or attempt to land more than 20,000 lb (9.08 mt) of mackerel per day after 95 percent of the river herring and shad cap has been harvested, if the vessel holds a valid mackerel permit.

(H) Possess more than the incidental catch allowance of butterfish, unless issued a butterfish moratorium permit.

(iii) *Gear and vessel requirements.* (A) Fish with or possess nets or netting that do not meet the gear requirements for Atlantic mackerel, longfin squid, *Illex* squid, or butterfish specified in § 648.23(a); or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed and not available for immediate use as defined in § 648.2 or the vessel is fishing under an exemption specified in § 648.23(a)(5).

(B) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower (shp) of 3,000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor

permit pursuant to § 648.6(a)(2). It shall be presumed that the Atlantic mackerel on board were harvested in or from the EEZ, unless the preponderance of reliable evidence available indicates otherwise.

(C) Enter or fish in the mackerel, squid, and butterfish bottom trawling restricted areas, as described in § 648.23(a)(6).

(D) If fishing with midwater trawl or purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(iv) *Observer requirements for longfin squid fishery*. Fail to comply with any of the provisions specified in § 648.11.

(v) *VMS reporting requirements in the directed Atlantic mackerel longfin squid, and Illex squid fisheries*. (A) Fail to declare via VMS into the directed mackerel, longfin squid,, or *Illex* squid fisheries by entering the fishery code prior to leaving port at the start of each trip if the vessel will harvest, possess, or land more than an incidental catch of Atlantic mackerel, longfin squid, or *Illex* squid and is issued a Limited Access Atlantic mackerel permit, Tier 1 or Tier 2 longfin squid moratorium permit, or *Illex* squid moratorium permit.

(B) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to arrival, or, if fishing ends less than 6 hours before arrival, immediately upon leaving the fishing grounds, if a vessel has been issued a Limited Access Atlantic mackerel permit, pursuant to § 648.10.

(vi) Slip catch, as defined at § 648.2, unless for one of the reasons specified at § 648.11(n)(3)(i) if issued a limited access Atlantic mackerel permit, or a longfin squid or a butterfish moratorium permit.

(vii) For vessels with a limited access Atlantic mackerel permits, fail to move 15 nm (27.8 km), as required by § 648.11(n)(3)(iii).

(viii)For vessels with a limited access Atlantic mackerel permit, fail to immediately return to port as required by § 648.11(n)(3)(iv).

(ix) Fail to complete, sign, and submit a Released Catch Affidavit if fish are released pursuant to the requirements at § 648.11(n)(3)(ii).

(x) Fail to report or fail to accurately report a slippage event on the VMS mackerel and longfin squid daily catch report, as required by § 648.11(n)(3)(ii).

(3) *Charter/party restrictions*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(i) Violate any recreational fishing measures established pursuant to § 648.22(d).

(ii) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(iii) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(4) *Presumption*. For purposes of this part, the following presumption applies: All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

(h) *Atlantic salmon*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person to do any of the following:

(1) *Possession and landing*. (i) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ. It shall be presumed that the Atlantic salmon on board were harvested in or from the EEZ, unless the preponderance of reliable evidence available indicates otherwise.

(ii) Transfer, directly or indirectly; or attempt to transfer, directly or indirectly; to any vessel any Atlantic salmon taken in or from the EEZ.

(2) [Reserved]

(i) *Atlantic sea scallops*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements.* Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(iii) *Possession and landing.* (A) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land:

(*1*) In excess of 40 lb (18.1 kg) of shucked scallops at any time, 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(*i*) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS, Area Access program, or the NGOM management area.

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery or is properly declared into the NE multispecies, Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board an NGOM or IFQ scallop permit, and is properly declared into the NGOM scallop management area, and the LAGC portion of the NGOM TAC specified in § 648.62 has not been harvested.

(*v*) [Reserved]

(*2*) In excess of 200 lb (90.7 kg) of shucked scallops at any time, 25 bu (8.8 hL) of in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(*i*) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery or is properly declared into the NE multispecies, or Atlantic surfclam or quahog fishery, or other fishery requiring a VMS declaration, and is not fishing in a sea scallop access area.

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(*v*) [Reserved]

(*3*) In excess of 600 lb (272.2 kg) of shucked scallops at any time, 75 bu (26.4 hL) of in-shell scallops per trip South of 42°20′ N. Lat. and shoreward of the VMS Demarcation Line or 100 bu (35.2 hL) in-shell scallops South of 42°20′ N. Lat. and seaward of the VMS Demarcation Line, unless:

(*i*) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(*ii*) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i) and is properly declared into the scallop DAS or Area Access program.

(*iii*) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(*iv*) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(iv) *Transfer and purchase.* (A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel

has not been issued a scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or LAGC scallop permit, unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scallops harvested from the EEZ by a vessel issued a Federal scallop permit, unless the transferee has a valid scallop dealer permit.

(E) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

(v) *Ownership cap*. Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

(vi) *Closed area requirements*—

(A) *Habitat Management Areas*. (*1*) Fish for scallops in, or possess or land scallops from, the Habitat Management Areas specified in § 648.370.

(*2*) Transit or enter the Habitat Management Areas specified in § 648.370, except as provided by § 648.61(b).

(B) *Scallop Rotational Areas*. (*1*) Fish for scallops in, or possess or land scallops from, the Scallop Rotational Areas closed to the scallop fishery through the specifications or framework adjustment processes specified in § 648.55.

(*2*) Transit or enter the Scallop Rotational Areas, except as provided by § 648.59(a) or (b).

(vii) *Scallop sectors*. Fail to comply with any of the requirements or restrictions for general category scallop sectors specified in § 648.63.

(viii) *Scallop research*. (A) Fail to comply with any of the provisions specified in § 648.56 or the conditions of a letter of authorization issued under § 648.56.

(B) Fish for scallops in, or possess or land scallops from the NGOM, unless allocated NGOM RSA allocation as described in § 648.56(d) and fishing on a scallop research set aside compensation trip.

(ix) *Observer program*. (A) Refuse, or fail, to carry onboard an observer after being requested to by the Regional Administrator or the Regional Administrator's designee.

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to a NMFS-approved observer conducting his or her duties aboard a vessel, as specified in § 648.11.

(C) Fail to comply with the notification, observer services procurement, and observer services payment requirements of the sea scallop observer program specified in § 648.11(g).

(x) *Presumption*. For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(2) *Limited access scallop vessel permit holders*. It is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(i) *Minimum shell height*. Land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(ii) *Vessel, gear, and crew restrictions*. (A) Possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop

DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 5 bu (1.76 hL) of in-shell scallops, or fishing for scallops in the EEZ:

(*1*) Fish with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(*2*) Fail to comply with any chafing gear or other gear obstruction restrictions specified in § 648.51(a)(3).

(*3*) Fail to comply with the turtle deflector dredge vessel gear restrictions specified in § 648.51(b)(5), and turtle dredge chain mat requirements in § 223.206(d)(11) of this title.

(*4*) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(*5*) Fish under the small dredge program specified in § 648.51(e) with more persons on board the vessel, including the operator, than specified in § 648.51(e)(3), unless otherwise authorized by the Regional Administrator.

(*6*) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(*7*) Fish in a Sea Scallop Access Area, as described in § 648.60, with more persons on board the vessel than the number specified in § 648.51(c) or § 648.51(e)(3)(i), unless otherwise authorized by the Regional Administrator.

(*8*) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(*9*) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(*10*) Fail to comply with the gear restrictions described in § 648.51.

(iii) *Possession and landing.* (A) Land scallops after using up the vessel's annual DAS allocation or land scallops on more than one trip per calendar day when not participating under the DAS allocation program pursuant to § 648.10, unless exempted from DAS allocations as provided in the state waters exemption, specified in § 648.54.

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops inside the VMS Demarcation Line on or by a vessel, except as provided in the state waters exemption, as specified in § 648.54.

(C) Fish for, possess, or land per trip, at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(3) when properly declared into the Sea Scallop Area Access Program as described in § 648.59.

(D) Fish for, possess, or land yellowtail flounder from a vessel on a scallop fishing trip.

(E) Fish for, possess, or land scallops from the NGOM, unless on a scallop RSA compensation trip and allocated NGOM RSA allocation as described in § 648.56(d).

(iv) *DAS.* (A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and is lawfully fishing in a LAGC scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

(B) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.59(b)(3)(ii).

(C) Fail to comply with any requirement for declaring in or out of the DAS

allocation program or other notification requirements specified in § 648.10.

(D) Fail to comply with any requirements for declaring out of the DAS allocation program and steaming to land scallops at ports located at or south of 39° N. lat., as specified in § 648.53(f)(3).

(E) Possess on board or land in-shell scallops if declaring out of the DAS allocation program and steaming to land scallops at ports located at or south of 39° N. lat.

(v) *VMS requirements.* (A) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(B) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(C) If a limited access scallop vessel declares a scallop trip before first crossing the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear not available for immediate use as defined in § 648.2, until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded, except as specified at § 648.53(f)(3).

(E) Fail to submit a scallop access area pre-landing notification form through VMS as specified at § 648.10(f)(4)(iii).

(vi) *Scallop rotational area management program and scallop access area program requirements.* (A) Fail to comply with any of the provisions and specifications of § 648.59.

(B) Transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(C) Fish for, possess, or land scallops in or from an access area in excess of the vessel's remaining specific allocation for that area as specified in § 648.59(b)(3) or the amount permitted to be landed from that area.

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.59.

(E) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(F)–(G) [Reserved]

(vii) *State waters exemption program.* Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(viii) [Reserved□

(ix) Fish for scallops in the Mid-Atlantic Accountability Measure Area, described in § 648.64(b)(2) with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(x) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b)(1), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail Flounder or the Northern Windowpane Flounder Gear Restricted Area described in § 648.64(d) and (f), respectively.

(3) *LAGC scallop vessels.* It is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) *Permit requirements.* (A) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O).

(B) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit, or is an IFQ scallop vessel that is properly declared into the IFQ scallop, NE multispecies, Atlantic surfclam or quahog, or other fishery requiring a VMS declaration.

(ii) *Gear requirements.* (A) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b).

(iii) *Possession and landing.* (A) Land scallops more than once per calendar day.

(B) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.52.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the FEDERAL REGISTER stating that the LAGC portion of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the FEDERAL REGISTER that the LAGC portion of the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.2 or unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(iv) *VMS requirements.* (A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.59, or 648.62.

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(b).

(C) If an LAGC scallop vessel declares a scallop trip shoreward of the VMS Demarcation Line, but not necessarily from port, in accordance with § 648.10(f), fail to declare out of the fishery in port and have fishing gear not available for immediate use as defined in § 648.2, until declared into the scallop fishery.

(D) Once declared into the scallop fishery in accordance with § 648.10(f), change its VMS declaration until the trip has ended and scallop catch has been offloaded.

(v) *Scallop rotational area management program and scallop access area program requirements.* (A) Fail to comply with any of the requirements specified in § 648.59.

(B) Declare into or leave port for an area specified in § 648.60 after the effective date of a notification published in the FEDERAL REGISTER stating that the number of LAGC trips have been taken, as specified in § 648.59.

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Sea Scallop Access Area specified at § 648.60, unless declared into the Sea Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(E) Transit the Closed Area II Scallop Rotational Area, as defined in § 648.60 (d), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(vi) *Sectors.* Fail to comply with any of the requirements and restrictions for General Category sectors and harvesting cooperatives specified in § 648.63.

(4) *IFQ scallop permit.* It is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) *Possession and landing.* (A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.59(d).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) of in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Declare into the NGOM scallop management area after the effective date of a notification published in the FEDERAL REGISTER stating that the LAGC share of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(D) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not be participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(E) [Reserved]

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the State waters exemption program, specified at § 648.54.

(H) Land scallops more than once per calendar day.

(ii) *Owner and allocation cap.* (A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL as specified in § 648.53(a)(8).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL as specified in § 648.53(a)(8).

(iii) *IFQ Transfer Program.* (A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop ACL.

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2.5 percent of the total IFQ scallop ACL as specified in § 648.53(a)(4)(i).

(C) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(5).

(D)–(F) [Reserved]

(G) Transfer scallop IFQ to, or receive scallop IFQ from, a vessel that has not been issued a valid IFQ scallop permit.

(iv) *Cost Recovery Program.* Fail to comply with any of the cost recovery requirements specified under § 648.53(g)(4).

(v) Fish for scallops in the Mid-Atlantic Accountability Measure Area, described in § 648.64(b)(2) with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Southern New England/Mid-Atlantic Yellowtail Flounder or the Southern Windowpane Flounder Gear Restricted Area described in § 648.64(e) and (g), respectively.

(vi) Fish for scallops in the Georges Bank Accountability Measure Area described in § 648.64(b)(1), with gear that does not meet the specifications described in § 648.64(c) during the period specified in the notice announcing the Georges Bank Yellowtail Flounder or the Northern Windowpane Flounder

Gear Restricted Area described in § 648.64(d) and (f), respectively.

(5) *NGOM scallop permit*. It is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops in or from the NGOM scallop management area, or seaward of the VMS Demarcation Line more than 50 bu (17.6 hL) of in-shell scallops.

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the FEDERAL REGISTER that the LAGC share of the NGOM scallop management area TAC has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

(iv) Fish for, possess, or retain scallops in Federal waters of the NGOM after declaring a trip into NGOM state waters.

(6) *Incidental scallop permit*. It is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

(j) *Atlantic surfclam and ocean quahog*. It is unlawful for any person to do any of the following:

(1) *Possession and landing*. (i) Fish for surfclams or ocean quahogs in any area closed to surfclam or ocean quahog fishing.

(ii) Shuck surfclams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.75.

(iii) Fish for, retain, or land both surfclams and ocean quahogs in or from the EEZ on the same trip.

(iv) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surfclam fishing trip under § 648.15(b); or fish for, retain, or land surfclams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(v) Fail to offload any surfclams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(vi) Land or possess any surfclams or ocean quahogs harvested in or from the EEZ without having been issued, or in excess of, an individual allocation.

(2) *Transfer and purchase*. (i) Receive for a commercial purpose other than solely for transport on land, surfclams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.74, unless issued a dealer/processor permit under this part.

(ii) Transfer any surfclams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than solely for transport on land, without a surfclam or ocean quahog processor or dealer permit.

(iii) Offload unshucked surfclams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(3) *Gear and tags requirements*. (i) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(ii) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Administrator.

(iii) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(iv) Tag a cage of surfclams with an ocean quahog cage tag, or tag a cage of ocean quahogs with a surfclam cage tag.

(v) Possess an empty cage to which a cage tag required by § 648.77 is affixed, or possess any cage that does not contain surfclams or ocean quahogs and to

which a cage tag required by § 648.77 is affixed.

(vi) Land or possess, after offloading, any cage holding surfclams or ocean quahogs without a cage tag or tags required by § 648.77, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.77(h).

(vii) Sell null and void tags.

(4) *VMS requirements.* (i) Fail to maintain an operational VMS unit as specified in § 648.9, and comply with any of the notification requirements specified in § 648.15(b) including:

(A) Fish for, land, take, possess, or transfer surfclams or ocean quahogs under an open access surfclam or ocean quahog permit without having provided proof to the Regional Administrator that the vessel has a fully functioning VMS unit on board the vessel and declared a surfclam, ocean quahog, or Maine mahogany quahog fishing activity code via the VMS unit prior to leaving port as specified at § 648.15(b).

(B) Fish for, land, take, possess, or transfer ocean quahogs under a limited access Maine mahogany quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b).

(5) *Maine mahogany quahog zone.* (i) Land unshucked surfclams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(ii) Land unshucked surfclams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.74.

(iii) Offload unshucked surfclams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(iv) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.74.

(v) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the FEDERAL REGISTER notifying participants that Maine mahogany quahog quota is no longer available for the respective fishing year, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.74.

(6) *Presumptions.* For purposes of this part, the following presumptions apply:

(i) Possession of surfclams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson-Stevens Act and these regulations.

(ii) Surfclams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.74(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.74.

(iii) Surfclams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.74; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surfclam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this part, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.74 or § 648.77(b).

(k) *NE multispecies*—(1) *Permit requirements for all persons*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Fish for, possess, or land NE multispecies, unless:

(A) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid Federal NE multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has a valid operator's permit and has it on board the vessel.

(B) The NE multispecies were harvested by a vessel not issued a Federal NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4(b)(2), that fishes for NE multispecies exclusively in state waters.

(C) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(D) Any haddock, and up to 100 lb (45 kg) of other regulated NE. multispecies other than haddock, were harvested by a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e), and such fish are not sold for human consumption.

(E) Otherwise specified in § 648.17.

(ii) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; NE multispecies from one vessel to another vessel, unless both vessels have not been issued Federal NE multispecies permits and both fish exclusively in state waters, unless authorized in writing by the Regional Administrator, or otherwise allowed.

(iii) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer; for a commercial purpose any NE multispecies from a trip, unless:

(A) The vessel is holding a Federal NE multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89.

(B) The NE multispecies were harvested by a vessel without a Federal NE multispecies permit that fishes for NE multispecies exclusively in state waters.

(C) Or as otherwise specified in § 648.17.

(iv) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a Federal NE multispecies vessel permit without having been issued and possessing a valid operator's permit.

(2) *Permit requirements for vessel and operator permit holders*. It is unlawful for any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Fish for, possess, or land NE multispecies with or from a vessel that has had the length overall of such vessel, or its replacement, increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i)(E) and (F).

(ii) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(iii) Fail to comply with the pre-trip notification requirements of the NE multispecies observer program specified in § 648.11(k).

(iv) Possess or land fish while setting fixed gear on a set-only trip as declared through the pre-trip notification system pursuant to § 648.11(k).

(v) Fish for, possess, land fish, enroll in a sector, or lease a permit or confirmation of permit history (CPH) as a lessor or lessee, with a permit that has been rendered unusable as specified in § 648.4(a)(1)(i)(N).

(vi) Acquire a limited access NE multispecies permit that would result in a permit holder exceeding any of the ownership accumulation limits specified in § 648.4(a)(1)(i)(N), unless authorized under § 648.4(a)(1)(i)(N).

(3) *Dealer requirements.* (i) It is unlawful to purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

(ii) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(4) *NAFO.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), to fail to comply with the exemption specifications in § 648.17.

(5) *Regulated Mesh Areas.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (a)(19), the Eastern and Western Cape Cod Spiny Dogfish Exemption Areas; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; (b)(11), the SNE Scallop Dredge Exemption Area; or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

(ii) Enter or fish in the Gulf of Maine, Georges Bank, or Southern New England Regulated Mesh Areas, except as provided in § 648.80(a)(3)(vi) and (b)(2)(vi), and, for purposes of transiting, all gear (other than exempted gear) must be stowed and not available for immediate use as defined in § 648.2.

(iii) *Gulf of Maine and Georges Bank Regulated Mesh Areas.* (A) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4); except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i); unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(B) Fish within the areas described in § 648.80(a)(6) with net mesh smaller than the minimum size specified in § 648.80(a)(3) or (4).

(iv) *Southern New England Regulated Mesh Area.* Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), net mesh smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(v) *Mid-Atlantic Regulated Mesh Area.* Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum mesh size specified in § 648.80(c)(2); except as provided in § 648.80(c)(3), (d), (e), and (i); or unless the vessel has not been issued

a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(vi) *Mid-water trawl exempted fishery.* (A) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(B) Possess, land, or fish for regulated species or ocean pout, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a LAGC permit, unless the vessel and the dredge gear conform with the definition of not available for immediate use as defined in § 648.2, or unless the vessel has not been issued a Federal NE multispecies permit and fishes for, possesses, or lands NE multispecies exclusively in state waters.

(vii) *Scallop vessels.* (A) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

(B) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the definition of not available for immediate use as defined in § 648.2, or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(viii) *Northern shrimp and small mesh multispecies exempted fisheries.* (A) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5).

(B) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5)(ii) or (a)(9)(ii).

(ix) *Winter flounder state exemption program.* Violate any provision of the state waters winter flounder exemption program as provided in § 648.80(i).

(6) *Gear requirements*—(i) *For all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) Obstruct or constrict a net as described in § 648.80(g)(1) or (2).

(B) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

(C) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(D) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(E) Use, set, haul back, fish with, possess on board a vessel, unless stowed and not available for immediate use as defined in § 648.2, or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(b)(2)(ii) and (d)(5)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in § 648.80(g)(6)(i) and (ii), and § 648.81(b)(2)(ii) and (d)(5)(ii), or unless otherwise authorized in writing by the Regional Administrator.

(F) Fish for, land, or possess NE multispecies harvested with the use of de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a Federal NE

multispecies permit and fishes for NE multispecies exclusively in state waters.

(G) Possess or use de-hookers (''crucifiers'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(ii) *For vessel and operator permit holders*. It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) *Gillnet gear*. (*1*) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS or on a sector trip with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(B)(*3*), and (c)(2)(v)(B)(*3*), or fail to produce immediately, or cause to be produced immediately, gillnet tags when requested by an authorized officer.

(*2*) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

(*3*) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or that was issued to another vessel.

(*4*) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(*5*) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(B) *Hook gear*. Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(E).

(7) *Closed areas and EFH*—(i) *All persons*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) *Groundfish Closure Area restrictions*. Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(a)(3), (4), and (5) and (d)(3), except as provided in § 648.81(a)(2), (d)(2), and (i).

(B) *Groundfish Closure Area possession restrictions*. Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (d) and (n), unless otherwise specified in § 648.81(c)(2)(iii), (d)(5)(i), (iv), (viii), and (ix), (i), (b)(2), or as authorized under § 648.85.

(C) *Restricted Gear Areas*. (*1*) Fish, or be in the areas described in § 648.81(f)(3) through (6) on a fishing vessel with mobile gear during the time periods specified in § 648.81(f)(1), except as provided in § 648.81(f)(2).

(*2*) Fish, or be in the areas described in § 648.81(f)(3) through (5) on a fishing vessel with lobster pot gear during the time periods specified in § 648.81(f)(1).

(*3*) Deploy in or fail to remove lobster pot gear from the areas described in § 648.81(f)(3) through (5), during the time periods specified in § 648.81(f)(1).

(D) *Georges Bank Seasonal Closure Areas*. Enter, fail to remove gear from, or be in the areas described in § 648.81(c) during the time periods specified, except as provided in § 648.81(c)(2).

(E) [Reserved]

(F) *Closed Area II*. Enter or be in the area described in § 648.81(a)(5) on a fishing vessel, except as provided in § 648.81(a)(5)(ii).

(G) [Reserved]

(ii) *Vessel and permit holders*. It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, when fishing with bottom-tending mobile gear, fish in, enter, be on a fishing vessel in, the Habitat Management Areas described in § 648.370.

(8) *DAS restrictions for all persons*. It is unlawful for any person, including any

owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hr before leaving port.

(ii) Call in DAS in excess of those allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

(9) *DAS restrictions for vessel and operator permit holders.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) If operating under the provisions of a limited access NE multispecies Handgear A permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to declare the vessel operator's intent to fish in this area via VMS or fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.82(b)(6)(iii).

(ii) *DAS Leasing Program.* (A) Provide false information on an application, required by § 648.82(k)(4)(xi), to downgrade the DAS Leasing Program baseline.

(B) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(C) Provide false information on, or in connection with, an application, required under § 648.82(k)(3), to effectuate the leasing of NE multispecies DAS.

(D) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(E) Act as lessor or lessee of NE multispecies DAS, if the lessor's or the lessee's vessels do not comply with the size restrictions specified in § 648.82(k)(4)(ix).

(F) Sub-lease NE multispecies DAS.

(G) [Reserved]

(H) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(I) [Reserved]

(J) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(K) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(L) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

(M) Lease NE multispecies DAS to or from a common pool vessel if either the Lessor or the Lessee vessel is a sector vessel.

(N) Act as a lessor or lessee of NE multispecies DAS to or from a limited access permit that has been rendered unusable as specified in § 648.4(a)(1)(i)(N).

(iii) *DAS Transfer Program.* (A) Transfer NE multispecies DAS, or use transferred DAS, that have not been approved for transfer by the Regional Administrator, as specified in § 648.82(l).

(B) Provide false information on, or in connection with, an application, required by § 648.82(l)(2), for a NE multispecies DAS transfer.

(C) Permanently transfer only a portion of a vessel's total allocation of DAS.

(D) Permanently transfer NE multispecies DAS between vessels, if such vessels do not comply with the size restrictions specified in § 648.82(l)(1)(ii).

(E) Transfer NE multispecies DAS to or from a common pool vessel if either the Transferor or the Transferee vessel is a sector vessel.

(F) Transfer NE multispecies DAS to or from a sector vessel if either the Transferor or the Transferee vessel is enrolled in a different sector for that particular fishing year.

(iv) *Gillnet fishery.* (A) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

(B) For any common pool or sector vessel, fail to comply with the gillnet requirements and restrictions specified

in § 648.82(j), unless otherwise exempted pursuant to § 648.87.

(C) If a vessel has been issued a limited access Day gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(1).

(D) If a vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(v) *Spawning blocks.* Fail to declare, and be, out of the NE multispecies DAS program as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(vi) *DAS notification.* (A) For purposes of DAS notification, if required, or electing, to have a VMS unit under § 648.10:

(*1*) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(*2*) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage specified in § 648.10(b).

(B) Fail to comply with any provision of the DAS notification program specified in § 648.10.

(vii) *Charter/party vessels.* Participate in the DAS program pursuant to § 648.82 when carrying passengers for hire on board a vessel during any portion of a fishing trip.

(10) *Gear marking requirement for all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the gear-marking requirements of § 648.84.

(11) *U.S./Canada Resource Management Area*—(i) *Possession and landing restrictions of the U.S./Canada Area*—(A) *All Persons.* (*1*) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(*2*) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b) or exempted under § 648.87.

(*3*) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(*4*) If fishing both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(*2*) through (*4*).

(B) *Vessel and operator permit holders.* Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(ii) *Gear requirements for all persons.* If fishing with trawl gear under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhle trawl, as specified in § 648.85(a)(3)(iii) and (b)(6)(iv)(J)(*1*), unless using other gear authorized under § 648.85(b)(6) or (8).

(iii) *Notification and VMS requirements for all persons.* (A) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(B) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

(C) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(D) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), but not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(E) Fail to notify NMFS via VMS prior to departing the Eastern U.S./

Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(ii)(A)(*1*).

(F) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive requirements that apply to any area fished, including the DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(ii)(A).

(iv) *Reporting requirements for all persons.* (A) If fishing under a NE multispecies DAS or on a sector trip in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report in accordance with § 648.85(a)(3)(v).

(B) Fail to comply with the reporting requirements under § 648.85(a)(3)(ii)(A)(*2*) when fishing inside and outside of the Eastern U.S./Canada Area on one trip.

(v) *DAS*—(A) *All persons.* If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8) on the same trip, fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(3)(xi) and (b)(8)(v)(I), or the minimum Category A DAS requirement specified in § 648.85(b)(3)(xii) and (b)(8)(v)(J).

(B) *Vessel and operator permit holders.* (*1*) [Reserved]

(*2*) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required by § 648.85(a)(3)(ii)(A).

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS or on a sector trip, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(8).

(12) *SAP restrictions* (i) It is unlawful for any person to:

(A) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(ii) *General restrictions for vessel and operator permit holders.* Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a SAP, as described in §§ 648.85(b)(3)(xi), 648.85(b)(7)(iv)(H), or 648.85(b)(8)(v)(I).

(iii) *Closed Area II Yellowtail Flounder/Haddock SAP restrictions for all persons.* (A) If fishing under the Closed Area II Yellowtail Flounder/Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies or ocean pout from the area specified in § 648.85(b)(3)(ii), unless in compliance with § 648.85(b)(3)(i) through (xiii).

(B) Enter or fish in Closed Area II as specified in § 648.81(a)(5), unless declared into the area in accordance with § 648.85(b)(3)(v) or (b)(8)(v)(D).

(C) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder/Haddock SAP outside of the season specified in § 648.85(b)(3)(iii).

(D) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the number of trips specified in § 648.85(b)(3)(vi) or (vii).

(E) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(F) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), fail to comply with the gear requirements specified in § 648.85(b)(3)(x).

(iv) [Reserved]

(v) *Regular B DAS Program restrictions for vessel and operator permit holders.* (A) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with §§ 648.85(b)(6)(iv)(A) through (J).

(B) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described in § 648.85(a)(3)(iii)(A), or other approved gear as described in § 648.85(b)(6)(iv)(J).

(C) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(*1*) or (b)(8)(v)(E)(*1*), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(*3*).

(D) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(E) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(F) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(G) *DAS usage restrictions.* (*1*) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in § 648.82(d)(2)(i)(A).

(*2*) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(*3*) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(G) or (H), or (b)(6)(vi).

(H) *VMS requirements.* (*1*) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(*2*) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(I) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(J) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(vi) *Closed Area I Hook Gear Haddock SAP restrictions for vessel and operator permit holders.* (A) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi).

(B) Fish in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7) outside of the season specified in § 648.85(b)(7)(iii).

(C) Fish in the Closed Area I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).

(D) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable DAS use restrictions specified in § 648.85(b)(7)(iv)(A) and (b)(7)(vi)(A).

(E) *VMS requirements.* (*1*) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(*2*) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(D).

(F) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(G) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(A) or (b)(7)(vi)(B).

(H) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable landing limits specified in § 648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C).

(I) If fishing in the Closed Area I Hook Gear Haddock SAP specified in

§ 648.85(b)(7), fail to comply with the applicable reporting requirement specified in § 648.85(b)(7)(v)(C) or (b)(7)(vi)(D).

(vii) *Eastern U.S./Canada Haddock SAP Restrictions*—(A) *All Persons.* (*1*) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with § 648.85(b)(8)(v).

(*2*) *VMS and declaration requirements.* (*i*) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(*ii*) If fishing under a NE multispecies DAS or on a sector trip, fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

(*3*) Enter or fish in the Eastern U.S./Canada Haddock SAP outside of the season specified in § 648.85(b)(8)(iv).

(*4*) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(*1*) or (b)(8)(v)(E)(*1*), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(*3*).

(*5*) *Possession limits and restrictions.* (*i*) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in § 648.85(b)(8)(v)(F).

(*ii*) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions of § 648.85(b)(8)(v)(A) through (I).

(*6*) If fishing in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the reporting requirements of § 648.85(b)(8)(v)(G).

(*7*) If fishing under the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the observer notification requirements of § 648.85(b)(8)(v)(C).

(B) *Vessel and operator permit holders.* (*1*) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(*2*) *DAS usage restrictions.* (*i*) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in §§ 648.85(b)(8)(v)(F) or 648.86.

(*ii*) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required by § 648.85(b)(8)(v)(J).

(*3*) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(13) *Possession and landing restrictions.* (i) It is unlawful for any person to:

(A) Under § 648.85 or § 648.86, fail to offload a sufficient amount of regulated species or ocean pout subject to a daily possession limit at the end of a fishing trip, as required by § 648.86(i).

(B) *Scallop vessels.* Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54, or fishing under a general scallop permit, unless said fish are caught, possessed, or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(ii) *Vessel and operator permit holders.* (A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), (l), (n), and (o); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o); § 648.82(b)(5) and (6); § 648.85; or § 648.88, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(C) Fish for, possess at any time during a trip, or land regulated NE multispecies or ocean pout specified in § 648.86 after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted by § 648.82(b)(5), § 648.87, or § 648.89, or allowed pursuant to § 648.85(b)(6) or § 648.88.

(D) *Atlantic cod.* (*1*) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(*2*) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

(*3*) [Reserved]

(*4*) Fail to declare through VMS an intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

(E) *Atlantic halibut.* Possess or land per trip more than the possession or landing limit specified under § 648.86(c).

(F) *White hake.* Possess or land more white hake than allowed under § 648.86(e).

(G) *Yellowtail flounder.* While fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting with gear stowed and not available for immediate use as defined in § 648.2.

(H) *GB winter flounder.* Possess or land more GB winter flounder than allowed under § 648.86(j).

(I) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, land regulated species or ocean pout more than once within any 24-hr period.

(J) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, fail to comply with the most restrictive trip limits applicable when fishing in multiple areas, as specified in § 648.85 or § 648.86.

(14) *Sector requirements.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit and fishing on a sector trip to do any of the following:

(i) Fail to abide by the restrictions specified in § 648.87(b)(1).

(ii) Catch regulated species or ocean pout in excess of ACE allocated or transferred to that sector pursuant to § 648.87(b)(1)(i) and (viii), respectively.

(iii) Fish in a particular stock area, the Eastern U.S./Canada Area, or a SAP if the sector has not been allocated, does not acquire, or otherwise has insufficient ACE remaining/available for all stocks caught in that area, or fail to operate in a manner that would not catch stocks for which the sector has not been allocated ACE, as described in an approved sector operations plan pursuant to § 648.87(b)(2)(xiv), as prohibited in § 648.87(b)(1)(ii).

(iv) Violate the provisions of an approved sector operations plan or letter of authorization issued by the Regional Administrator, as required by § 648.87(b)(1)(iv) and (b)(2).

(v) Fail to remain in the sector for the remainder of the fishing year, as required by § 648.87(b)(1).

(vi) Unless otherwise required to use a NE multispecies DAS to participate in another fishery, fish in the NE multispecies DAS program in a given fishing year or, for common pool vessels, fish in an approved sector in a given fishing year.

(vii) If a vessel is removed from a sector for violating the Sector rules, fish under the NE multispecies regulations for common pool vessels.

(viii) Discard legal-sized regulated species or ocean pout allocated to sectors pursuant to § 648.87(b)(1)(i), as prohibited by § 648.87(b)(1)(v).

(ix) Fail to comply with the reporting requirements specified in § 648.87(b)(1)(v) or (vi).

(x) Leave port to begin a trip before an at-sea monitor has arrived and

boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(5)(iii)(A).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(5)(iv)(A).

(15) *Open access permit restrictions*—(i) *All persons*. (A) Violate any provision of the open access permit restrictions of § 648.88.

(B) Possess on board gear other than that specified in § 648.88(a)(2)(i), or fish with hooks greater than the number specified in § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(C) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(ii) *Vessel and operator permit holders*—(A) *Open access Handgear permit*. It is unlawful for any person owning or operating a vessel issued an open access NE multispecies Handgear permit to do any of the following, unless otherwise specified in § 648.17:

(*1*) Violate any provision of the open access Handgear permit restrictions of § 648.88(a).

(*2*) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.

(*3*) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

(*4*) Possess or land NE multispecies during the time period specified in § 648.88(a)(2).

(*5*) If operating under the provisions of a limited access NE multispecies Handgear B permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.88(a)(2)(iv).

(B) *Scallop multispecies possession limit permit*. It is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in § 648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

(C) *Open access NE multispecies (non-regulated species permit)*. It is unlawful for any owner or operator of a vessel issued a valid open access NE multispecies permit to possess or land any regulated species, as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.14, § 648.86, or § 648.88.

(16) *Recreational and charter/party requirements*. It is unlawful for the owner or operator of a charter or party boat issued a valid Federal NE multispecies permit, or for a recreational vessel, as applicable, unless otherwise specified in § 648.17, to do any of the following if fishing under the recreational or charter/party regulations:

(i) *Possession and landing*. Possess cod, haddock, or Atlantic halibut in excess of the possession limits specified in § 648.89(c).

(ii) *Gear requirements*. Fish with gear in violation of the restrictions of § 648.89(a).

(iii) *Seasonal and area restrictions*. (A) Fail to comply with the applicable restrictions if transiting the GOM Regulated Mesh Area with cod on board that was caught outside the GOM Regulated Mesh Area.

(B) Fail to comply with the requirements specified in § 648.81(d)(5)(v) when fishing in the areas described in § 648.81(b)(3) and (4) and (d) during the time periods specified.

(iv) *Restriction on sale and transfer*. Sell, trade, barter, or otherwise transfer; or attempt to sell, trade, barter or otherwise transfer; NE multispecies for a commercial purpose as specified in § 648.89(d).

(v) *Size limits*. If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout that are smaller than the minimum fish sizes specified in § 648.89(b)(1) and (b)(3).

(vi) *Identification*. If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout without at least 2 square inches (5.1 square cm) of contiguous skin that allows for the ready identification of the species of fish upon landing.

(vii) *Atlantic wolffish*. If fishing under the recreational or charter/party regulations, possess Atlantic wolffish.

(viii) *Ocean pout*. If fishing under the recreational or charter/party regulations, possess ocean pout.

(ix) *Windowpane flounder*. If fishing under the recreational or charter/party regulations, possess windowpane flounder.

(17) *Presumptions*. For purposes of this part, the following presumptions apply: Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 are deemed to have been taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(18) *Trimester TAC AM*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fish for, harvest, possess, or land regulated species or ocean pout in or from the closed areas specified in § 648.82(n)(2)(ii) once such areas are closed pursuant to § 648.82(n)(2)(i).

(19) *At-sea/electronic monitoring service providers*. It is unlawful for any at-sea/electronic monitoring service provider, including individual at-sea monitors, to do any of the following:

(i) Fail to comply with the operational requirements, including the recordkeeping and reporting requirements, specified in § 648.87(b)(5).

(ii) Provide false or inaccurate information regarding area fished; species identification; or amount of each species kept, discarded, or landed.

(20) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish*. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D) through (H).

(l) *Small-mesh multispecies*. (1) It is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer; or attempt to land, offload, or otherwise transfer; small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) *Presumptions*. For purposes of this part, the following presumption applies: All small-mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(m) *Monkfish*. It is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) *Permit requirement*. (i) Fish for, possess, retain, or land monkfish, unless:

(A) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9).

(B) The vessel does not hold a valid Federal monkfish permit and fishes for or possesses monkfish exclusively in state waters.

(C) The vessel does not hold a valid Federal monkfish permit and engages in recreational fishing.

(D) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(ii) Fish for, possess, or land monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

(2) *Gear requirements*. (i) Fish with or use nets with mesh size smaller than

the minimum mesh size specified in § 648.91(c) while fishing under a monkfish DAS, except as authorized by § 648.91(c)(1)(iii).

(ii) Fail to immediately produce gillnet tags when requested by an authorized officer.

(iii) Tag a gillnet with, or otherwise use or possess, a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or use or possess a false gillnet tag.

(iv) Sell, transfer, or give away gillnet tags.

(v) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(3) *Area restrictions*. (i) Fail to comply with the restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

(ii) Fail to comply with the NFMA requirements specified at § 648.94(f).

(4) *DAS requirements*. (i) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit.

(ii) Combine, transfer, or consolidate monkfish DAS allocations.

(5) *Size limits*. Fail to comply with the monkfish size limit restrictions of § 648.93 when issued a valid monkfish permit under § 648.4(a)(9) or when fishing in the EEZ.

(6) *Possession and landing*. (i) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94.

(ii) Violate any provision of the monkfish incidental catch permit restrictions as specified in §§ 648.4(a)(9)(ii) or 648.94(c).

(7) *Transfer and sale*. (i) Sell, barter, trade, or otherwise transfer for a commercial purpose; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose; any monkfish from a vessel without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(ii) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94.

(iii) Land, offload, or otherwise transfer; or attempt to land, offload, or otherwise transfer; monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(8) *Presumption*. For purposes of this part, the following presumption applies: All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

(n) *Summer flounder*—(1) *All persons*. Unless participating in a research activity as described in § 648.22(g), it is unlawful for any person to do any of the following:

(i) *Permit requirement*. Possess summer flounder in or harvested from the EEZ, either in excess of the possession limit specified in § 648.106, or before or after the time period specified in § 648.105, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(ii) *Transfer and purchase*. (A) Purchase or otherwise receive for a commercial purpose, other than solely for transport on land, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(B) Purchase or otherwise receive for commercial purposes summer flounder caught by a vessel subject to the possession limit of § 648.106.

(C) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state for the respective fishing year.

(iii) *Gear requirements*. Possess nets or netting with mesh not meeting the

minimum mesh requirement of § 648.108 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.106(a).

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.102(e), it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including a moratorium permit) to do any of the following:

(i) *Possession and landing.* (A) Possess 100 lb (45.4 kg) or more of summer flounder between May 1 and October 31, or 200 lb (90.7 kg) or more of summer flounder between November 1 and April 30, unless the vessel meets the gear requirements or restrictions specified in § 648.108.

(B) Possess summer flounder in other than a container specified in § 648.106(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.108(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.108(b).

(C) Land summer flounder for sale in a state after the effective date of a notification in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any summer flounder, possessed or landed by a vessel not issued a summer flounder moratorium permit.

(ii) *Transfer and purchase.* Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(iii) *Gear requirements.* (A) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.108, unless the nets or netting are stowed in accordance with § 648.108(e).

(B) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.108, unless the nets or netting are stowed in accordance with § 648.108(f).

(C) Fish west or south, as appropriate, of the line specified in § 648.108(b)(1) if exempted from the minimum mesh requirement specified in § 648.108 by a summer flounder exemption permit.

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.102(e), it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(i) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(ii) Possess summer flounder in excess of the possession limit established pursuant to § 648.106.

(iii) Fish for summer flounder other than during a season specified pursuant to § 648.105.

(iv) Sell or transfer summer flounder to another person for a commercial purpose.

(4) *Presumption.* For purposes of this part, the following presumption applies: All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(o) *Scup*—(1) *All persons.* Unless participating in a research activity as described in § 648.122(e), it is unlawful for any person to do any of the following:

(i) *Permit requirement.* Fish for, catch, or retain for sale, barter, or trade scup in or from the EEZ north of 35°15.3′ N. lat. on board a party or charter boat without the vessel having been issued an applicable valid party or charter boat permit pursuant to § 648.4(a)(6), unless the vessel other than a party or charter vessel observes the possession limit restrictions and prohibition against sales specified in § 648.125.

(ii) *Possession and landing.* (A) Possess scup in or harvested from the EEZ north of 35°15.3′ N. lat. in an area

closed, or before or after a season established pursuant to §§ 648.124 and 648.127.

(B) Possess scup in excess of the possession limit established pursuant to § 648.125.

(C) Fish for, possess, or land scup harvested in or from the EEZ north of 35°15.3′ N. lat. for a commercial purpose after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(D) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the amount specified in § 648.125, unless the vessel complies with all of the gear restrictions in § 648.125.

(E) Fish for, catch, retain, or land scup in or from the EEZ north of 35°15.3′ N. lat. in excess of the limit established through the annual specification process and published in the FEDERAL REGISTER pursuant to § 648.122(a).

(iii) *Minimum fish size.* Possess, other than solely for transport on land, scup harvested in or from the EEZ north of 35°15.3′ N. lat. that do not meet the minimum fish size specified in § 648.126.

(iv) *Transfer and purchase.* Purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3′ N. lat., or from a vessel issued a scup moratorium permit after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(v) *Gear requirements.* Fail to comply with any of the gear restrictions specified in § 648.125.

(vi) *Gear restricted areas.* Fish for, catch, possess, retain, or land longfin squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.124(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§ 648.124 and 648.125(a), unless the nets or netting are stowed in accordance with § 648.125(a)(5).

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.122(e), it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(i) *Possession and landing.* (A) Possess scup in excess of the threshold amount specified in § 648.125, unless the vessel meets the minimum mesh-size restrictions specified in § 648.125.

(B) Land scup for sale after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(C) Possess scup in, or harvested from, the EEZ in an area closed by, or before or after a season established pursuant to § 648.124.

(ii) *Transfer and purchase.* (A) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scup, unless the transferee has a dealer permit issued under § 648.6.

(B) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of § 648.13(i).

(3) *Charter/party requirements.* Unless participating in a research activity as described in § 648.122(e), it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire, or when carrying more than three crew members, if a charter boat, or more than five members, if a party boat to:

(i) Carry passengers for hire, or carry more than three crew members for a charter boat, or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to § 648.4(a)(6).

(ii) Possess scup in excess of the possession limit established pursuant to § 648.128.

(iii) Fish for scup other than during a season established pursuant to § 648.124.

(iv) Sell scup or transfer scup to another person for a commercial purpose other than solely for transport on land.

(v) Possess scup that do not meet the minimum fish size specified in § 648.126(b).

(4) *Presumption.* For purposes of this part, the following presumption applies: All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in

the EEZ, north of 35°15.3′ N. lat., unless a preponderance of the evidence shows the fish were harvested by a vessel that fished exclusively in state waters.

(p) *Black sea bass*—(1) *All persons*. Unless participating in a research activity as described in § 648.142(d), it is unlawful for any person to do any of the following:

(i) *Permit requirement*. Possess black sea bass in or harvested from the EEZ north of 35°15.3′ N. lat., either in excess of the possession limit established pursuant to § 648.145, or before or after the time period established pursuant to § 648.146, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel.

(ii) *Possession and landing*. Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3′ N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.144(a)(1)(i), unless the vessel complies with all of the gear restrictions at § 648.144(a).

(iii) *Transfer and purchase*. Purchase or otherwise receive for commercial purposes, other than solely for transport on land, black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3′ N. lat., after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(iv) *Gear restriction*. Fail to comply with any of the gear restrictions specified in § 648.144.

(v) *Minimum fish size*. Fish for, possess, land, or retain black sea bass in or from the EEZ that does not comply with the minimum fish size specified in § 648.147.

(vi) *Special management zone*. Fail to comply with any of the restrictions for special management zones specified in § 648.148(b).

(2) *Vessel and operator permit holders*. Unless participating in a research activity as described in § 648.142(d), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(i) *Permit requirement*. Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any black sea bass from a vessel, unless the transferee has a valid black sea bass dealer permit.

(ii) *Possession and landing*. (A) Land black sea bass for sale in any state, or part thereof, north of 35°15.3′ N. lat. after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(B) [Reserved]

(C) Land black sea bass for sale in any state south of North Carolina.

(D) Possess black sea bass after the effective date of a notification published in the FEDERAL REGISTER stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3′ N. lat.

(3) *Charter/party restrictions*. Unless participating in a research activity as described in § 648.142(e), it is unlawful for the owner or operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five members, if a party boat, to:

(i) Fish for black sea bass under the terms of a moratorium permit issued pursuant to § 648.4(a)(7).

(ii) Possess, retain, or land black sea bass in excess of the possession limit established pursuant to § 648.145.

(iii) Fish for black sea bass other than during a time allowed pursuant to § 648.146.

(iv) Sell black sea bass or transfer black sea bass from a vessel to another person for a commercial purpose other than solely for transport on land.

(4) *Presumption*. For purposes of this part, the following presumption applies: All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel

also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3′ N. lat.

(q) *Bluefish*. Unless participating in a research activity as described in § 648.162(g), it is unlawful for any person to do any of the following:

(1) *Permit requirement*. Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) *Possession and landing*. (i) Land bluefish for sale in a state after the effective date of a notification in the FEDERAL REGISTER pursuant to § 648.163(b), that the commercial quota is no longer available in that state.

(ii) Land bluefish for sale after the effective date of a notification in the FEDERAL REGISTER pursuant to § 648.163(a), that the bluefish fishery is closed.

(3) *Transfer and purchase*. (i) Sell, barter, trade or transfer; or attempt to sell, barter, trade or otherwise transfer; other than for transport, bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(ii) Purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(iii) Purchase or otherwise receive for a commercial purpose bluefish harvested by a Federally permitted vessel after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(4) *Charter/party restrictions*. Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a bluefish permit issued under § 648.4(a)(8).

(5) *Presumption*. For purposes of this part, the following presumption applies: All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

(r) *Atlantic herring*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Possession and landing*. (A) Fish for, possess, retain or land herring, unless:

(*1*) The herring are being fished for, or were harvested in or from, the EEZ by a vessel holding a valid herring permit under this part and the operator on board such vessel possesses a valid operator permit that is on board the vessel.

(*2*) The herring were harvested by a vessel not issued a herring permit that fished exclusively in state waters.

(*3*) The herring were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(*4*) The herring were possessed for personal use as bait.

(*5*) Unless otherwise specified in § 648.17.

(B) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 2,000 lb (907.2 kg) of herring per trip; or land, or attempt to land more than 2,000 lb (907.2 kg) of herring per day in or from a management area closed pursuant to § 648.201(a), or from a river herring and shad catch cap closure area that has been closed to specified gear pursuant to § 648.201(a)(4)(ii), if the vessel has been issued and holds a valid herring permit.

(C) Possess or land more herring than is allowed by the vessel's Atlantic herring permit or the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively, including vessels pair trawling, purse seining, or transferring herring at-sea.

(iii) *Processing requirements*. (A) Process herring that was caught in or from the EEZ by a U.S. vessel that exceeds the size limits specified in

§ 648.4(a)(10)(iii), in excess of the specification of USAP.

(B) Discard herring carcasses at sea after removing the roe, if a Federally permitted vessel; or in the EEZ, if not a Federally permitted vessel.

(C) Catch, take, or harvest herring for roe, at sea, if a Federally permitted vessel; or if not Federally permitted, in or from the EEZ in excess of any limit established by § 648.206(b)(24).

(iv) *Transfer and purchase.* (A) Purchase, possess, receive; or attempt to purchase, possess, or receive; as a dealer, or in the capacity of a dealer, herring harvested in or from the EEZ, without having been issued, and in possession of, a valid herring dealer permit.

(B) Purchase, possess, receive; or attempt to purchase, possess, or receive; as a processor, or in the capacity of a processor, herring from a fishing vessel with a herring permit or from a dealer with a herring dealer permit, without having been issued, and in possession of, a valid herring processor permit.

(C) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer; for a commercial purpose, any herring, unless the harvesting vessel has been issued a herring permit, or unless the herring were harvested by a vessel without a Federal herring permit that fished exclusively in state waters.

(D) Purchase, possess, or receive, for a commercial purpose; or attempt to purchase, possess, or receive, for a commercial purpose; herring caught by a vessel without a herring permit, unless the herring was harvested by a vessel without a Federal herring permit that fished exclusively in state waters.

(E) Transfer, or attempt to transfer, herring to a Canadian transshipment vessel that is permitted in accordance with Public Law 104–297, if the amount of herring transshipped exceeds the amount of the border transfer specified in § 648.200.

(v) *Gear and vessel requirements.* (A) If fishing with midwater trawl or purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(B) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(vi) *Area requirements.* (A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a declared herring trip with a vessel issued an All Areas Limited Access Herring Permit and/or an Area 2 and 3 Limited Access Herring Permit and fishing with midwater trawl or purse seine gear, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), pursuant to the requirements in § 648.80(d) and (e).

(B) Possess, land, transfer, receive, sell, purchase, trade, or barter; or attempt to transfer, receive, sell, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic herring per trip taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all herring possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(C) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 2,000-lb (907.2 kg) limit specified in § 648.86(a)(3)(ii)(A)(*1*) is in place for the area being transited, in possession of more than 2,000 lb (907.2 kg) of herring, unless all herring on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as defined in § 648.2.

(D) Fish for herring in Area 1A from June 1 through September 30 with midwater trawl gear.

(E) Possess or land haddock taken from the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), by a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, after the haddock cap for the area(s) has been reached pursuant to § 648.86(a)(3), unless all haddock possessed or landed by the vessel was caught outside the applicable Accountability Measure Area(s).

(F) Transit the Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, defined in § 648.86(a)(3)(ii)(A)(*1*), with a vessel issued an Atlantic herring permit and that fished with midwater trawl gear, when the 0-lb (0-kg) haddock possession limit in § 648.86(a)(3)(ii)(A)(*1*) is in place for the area being transited, in possession of haddock, unless all haddock on board was caught outside of the applicable Herring GOM Haddock Accountability Measure Area and/or the Herring GB Haddock Accountability Measure Area, and all fishing gear is stowed and not available for immediate use, as defined in § 648.2.

(G) Fish for, possess, or retain herring in any management area during a season that has zero percent of the herring sub-ACL allocated as specified in § 648.201(d).

(vii) *Transit and transport.* (A) Transit or be in an area closed to fishing for Atlantic herring pursuant to § 648.201(a) with more than 2,000 lb (907.2 kg) of herring, unless all fishing gear is not available for immediate use as defined in § 648.2.

(B) Receive Atlantic herring at sea in or from the EEZ, solely for transport, without an Atlantic herring carrier letter of authorization from the Regional Administrator or having declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

(C) Fail to comply with a letter of authorization from the Regional Administrator.

(D) Transit Area 1A from June 1 through September 30 with more than 2,000 lb (907.2 kg) of herring without mid-water trawl gear properly stowed and not available for immediate use as defined in § 648.2.

(E) Discard haddock at sea that has been brought on deck, or pumped into the hold, of a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or on a trip with a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e).

(F) Transit or be in an area that has zero percent sub-ACL available for harvest specified at § 648.201(d) with herring on board, unless such herring were caught in an area or areas with an available sub-ACL specified at § 648.201(d), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a vessel permit that authorizes the amount of herring on board for the area where the herring was harvested.

(viii) *VMS requirements.* (A) Catch, take, or harvest Atlantic herring in or from the EEZ, if a limited access herring vessel, unless equipped with an operable VMS unit.

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing herring at the end of a declared herring trip, if a vessel has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and is fishing with either midwater trawl or purse seine gear, or a Limited Access Incidental Catch Herring Permit and is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3).

(C) Fail to declare via VMS into the herring fishery by entering the appropriate herring fishery code and appropriate gear code prior to leaving port at the start of each trip to harvest, possess, or land herring, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or is intending to act as an Atlantic herring carrier.

(D) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6

hr prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or has declared an Atlantic herring carrier trip via VMS.

(2) *Vessel and operator permit holders.* It is unlawful for any person owning or operating a vessel holding a valid Federal Atlantic herring permit, or issued an operator's permit, to do any of the following:

(i) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish); or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE. multispecies for human consumption; if the regulated NE. multispecies are landed by a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear pursuant to § 648.80(d).

(ii) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out, and retain, for at least 12 hr, all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iii) Sell, purchase, receive, trade, barter, or transfer; or attempt to sell, purchase, receive, trade, barter, or transfer; to another person, any haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish) separated out from a herring catch offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iv) While operating as an at-sea herring processor, fail to comply with requirements to separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a)(3) through (5) and (c)(3) and (4), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(vi) Slip or operationally discard catch, as defined at § 648.2, unless for one of the reasons specified at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a)(3) through (5) and (c)(3) and (4).

(vii) Fail to immediately leave the Northeast Multispecies Closed Areas or comply with reporting requirements after slipping catch or operationally discarding catch, as required by § 648.202(b)(4).

(viii) Slip catch, as defined at § 648.2, unless for one the reasons specified at § 648.11(m)(4)(i).

(ix) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to move 15 nm (27.78 km), as required by § 648.11(m)(4)(iv) and § 648.202(b)(4)(iv).

(x) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to immediately return to port, as required by § 648.11(m)(4)(v) and § 648.202(b)(4)(iv).

(xi) Fail to complete, sign, and submit a Released Catch Affidavit as required by § 648.11(m)(4)(iii) and § 648.202(b)(4)(ii).

(xii) Fail to report or fail to accurately report a slippage event on the Atlantic herring daily VMS catch report, as required by § 648.11(m)(4)(iii) and § 648.202(b)(4)(iii).

(3) *Presumption*. For purposes of this part, the following presumption applies: All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

(s) *Spiny dogfish*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Purchase or otherwise receive, other than solely for transport on land, spiny dogfish from any person on board a vessel issued a Federal spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(ii) *Transfer and purchase*. Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a Federally permitted vessel in any state, from Maine to Florida, after the EEZ is closed to the harvest of spiny dogfish.

(2) *Vessel and operator permit holders*. It is unlawful for any person owning or operating a vessel issued a valid Federal spiny dogfish permit or issued a valid Federal operator's permit to do any of the following:

(i) *Permit requirement*. Sell, barter, trade or transfer; or attempt to sell, barter, trade or otherwise transfer; other than solely for transport on land, spiny dogfish, unless the dealer, transferor, or transferee has a valid dealer permit issued under § 648.6(a).

(ii) *Possession and landing*. (A) Fish for or possess spiny dogfish harvested in or from the EEZ after the EEZ is closed to the harvest of spiny dogfish.

(B) Land spiny dogfish for a commercial purpose after the EEZ is closed to the harvest of spiny dogfish.

(C) Possess more than the daily possession limit of spiny dogfish specified in § 648.235.

(iii) *Prohibition on finning*. Violate any of the provisions in §§ 600.1203 and 600.1204 applicable to the dogfish fishery that prohibit finning.

(t) *Red crab*. It is unlawful for any person to do any of the following:

(1) *Permit requirement*. Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid Federal limited access red crab vessel permit or Federal red crab incidental catch permit.

(2) *Possession and landing*. (i) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; red crab in excess of the limits specified in § 648.263.

(ii) *Restriction on female red crabs*. Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; female red crabs in excess of one standard U.S. fish tote.

(iii) Fish for, possess, or land red crab, in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(3) *Transfer and purchase*. (i) Transfer at sea, or attempt to transfer at sea, either directly or indirectly, any red crab or red crab parts taken in or from the EEZ portion of the red crab management unit to any vessel.

(ii) Purchase, possess, or receive; or attempt to purchase, possess, or receive; more than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), caught or possessed in the EEZ portion of the red crab management unit by a vessel without a valid Federal limited access red crab permit.

(iii) Purchase, possess, or receive; or attempt to purchase, possess, or receive; up to 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not

been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(iv) Purchase or otherwise receive for a commercial purpose in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(4) *Prohibitions on processing and mutilation.* (i) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote, if fishing on a red crab trip with a valid Federal limited access red crab permit.

(ii) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid Federal limited access red crab permit or has been issued a valid Federal limited access red crab permit, but is not fishing on a dedicated red crab trip.

(iii) Retain, possess, or land more than two claws and eight legs per crab if the vessel has been issued a valid Federal red crab incidental catch permit, or has been issued a valid Federal limited access red crab permit and is not fishing on a dedicated red crab trip.

(iv) Possess or land red crabs that have been fully processed at sea, i.e., engage in any activity that removes meat from any part of a red crab, unless a preponderance of available evidence shows that the vessel fished exclusively in state waters and was not issued a valid Federal permit.

(5) *Gear requirements.* Fail to comply with any gear requirements or restrictions specified at § 648.264.

(6) *Presumption.* For purposes of this part, the following presumption applies: All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

(u) *Golden and blueline tilefish.* It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements*—(i) *Operator permit.* Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing golden or blueline tilefish in or from the Tilefish Management Unit, unless the operator has been issued, and is in possession of, a valid operator permit. This requirement does not apply to operators of private recreational vessels.

(ii) *Dealer permit.* Purchase, possess, receive for a commercial purpose; or attempt to purchase, possess, or receive for a commercial purpose; as a dealer, or in the capacity of a dealer, golden or blueline tilefish that were harvested in or from the Tilefish Management Unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(iii) *Vessel permit.* (A) Sell, barter, trade, or otherwise transfer from a vessel; or attempt to sell, barter, trade, or otherwise transfer from a vessel; for a commercial purpose, other than solely for transport on land, any golden or blueline tilefish, unless the vessel has been issued a commercial tilefish permit, or unless the tilefish were harvested by a vessel without a commercial tilefish permit that fished exclusively in State waters.

(B) Operate a vessel that takes recreational fishermen for hire to fish for golden or blueline tilefish in the Tilefish Management Unit without a valid tilefish charter/party vessel permit, as required in § 648.4(a)(12)(i).

(2) *Possession and landing.* (i) Fish for, possess, retain, or land golden or blueline tilefish, unless:

(A) The tilefish are being fished for or were harvested in or from the Tilefish Management Unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel, other than a charter/party vessel, that is engaged in recreational fishing.

(ii) Land or possess golden or blueline tilefish harvested in or from the

Tilefish Management Unit, in excess of either:

(A) The relevant commercial trip limit specified at § 648.295, unless possessing golden tilefish authorized pursuant to a valid tilefish IFQ allocation permit, as specified in § 648.294(a).

(B) The relevant recreational possession limit specified at § 648.296, if engaged in recreational fishing including charter/party vessels.

(iii) Land golden tilefish harvested in or from the Tilefish Management Unit in excess of that authorized under a tilefish IFQ allocation permit as described at § 648.294(a).

(iv) Fish for golden or blueline tilefish inside and outside of the Tilefish Management Unit on the same trip.

(v) Discard golden tilefish harvested in or from the Tilefish Management Unit, as defined in § 648.2, unless participating in recreational fishing, as defined in § 648.2, or while fishing subject to a trip limit pursuant to § 648.295(a).

(vi) Land or possess golden tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental golden tilefish fishery is closed pursuant to § 648.295(a)(3), unless fishing under a valid tilefish IFQ allocation permit as specified in § 648.294(a), or engaged in recreational fishing.

(vii) Land or possess blueline tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the commercial blueline tilefish fishery is closed pursuant to § 648.295(b)(2), unless engaged in recreational fishing.

(viii) Land or possess golden or blueline tilefish in or from the Tilefish Management Unit, on a vessel issued a valid commercial tilefish permit under this part, that do not have the head and fins naturally attached to the fish.

(ix) Engage in recreational fishing for golden tilefish with fishing gear that is not compliant with the gear restrictions specified at § 648.296.

(x) Engage in recreational fishing for blueline tilefish outside of the recreational open season specified at § 648.296(b).

(3) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; golden or blueline tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(ii) Purchase or otherwise receive for commercial purposes golden or blueline tilefish caught in the EEZ from outside the Tilefish Management Unit unless otherwise permitted under 50 CFR part 622.

(4) *Presumption.* For purposes of this part, the following presumption applies: All golden or blueline tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Tilefish Management Unit, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in state waters.

(v) *Skates*—(1) *All persons.* It is unlawful for any person to fish for, possess, transport, sell or land skates in or from the EEZ portion of the skate management unit, unless:

(i) Onboard a vessel that possesses a valid skate vessel permit.

(ii) Onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of only whole skates as bait that are less than the maximum size specified at § 648.322(c).

(2) *All Federal permit holders.* It is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(i) Retain, possess, or land thorny skates taken in or from the EEZ portion of the skate management unit specified at § 648.2.

(ii) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in § 648.322(c); when fishing under a NE multispecies Category B DAS as described under § 648.322(b); when fishing under the incidental skate possession limit for vessels not under a DAS as described in § 648.322(b)(4); or when fishing in a NE

multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(iii) Discard any skate wings when in possession of barndoor skate wings.

(iv) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

(3) *Skate permitted vessel requirements.* It is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(i) *Skate wings.* Fail to comply with the conditions of the skate wing possession and landing limits specified at § 648.322(b), unless holding a valid letter of authorization to fish for and land skates as bait at § 648.322(c).

(ii) *Possession and transfer.* (A) Transfer at sea, or attempt to transfer at sea, to any vessel, any skates unless in compliance with the provisions of §§ 648.13(h) and 648.322(c).

(B) Purchase, possess, trade, barter, or receive; or attempt to purchase, possess, trade, barter, or receive; skates caught in the EEZ portion of the skate management unit by a vessel that has not been issued a valid Federal skate permit under this part.

(C) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; whole skates and skate wings in excess of the possession limits specified at § 648.322.

(iii) *DAS notification and skate wing possession.* Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92; for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively; when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(iv) *SNE Trawl and Gillnet Exemption areas restrictions.* Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(4) *Presumption.* For purposes of this part, the following presumption applies: All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion (such as fishing within the NAFO Regulatory Area under § 648.17(a)(3)) of the skate management unit or only in state waters.

(w) *Mid-Atlantic forage species and Atlantic chub mackerel.* It is unlawful for any person owning or operating a vessel issued a valid commercial permit under this part to do any of the following:

(1) Fish for, possess, transfer, receive, or land; or attempt to fish for, possess, transfer, receive, or land; more than 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c). A vessel not issued a commercial permit in accordance with § 648.4 that fished exclusively in state waters or a vessel that fished Federal waters outside of the Mid-Atlantic Forage Species Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from this prohibition.

(2) Fish for, possess, transfer, receive, or land; or attempt to fish for, possess, transfer, receive, or land; more than 40,000 lb (18.14 mt) of Atlantic chub mackerel per trip in or from the Mid-Atlantic Forage Species Management Unit, as defined at § 648.351(c), after the annual Atlantic chub mackerel landing limit has been harvested and notice has been provided to the public consistent with the Administrative Procedure Act. A vessel not issued a commercial permit in accordance with § 648.4 that fished exclusively in state waters or a vessel that fished in Federal waters outside of the Mid-Atlantic Forage Species Management Unit that is transiting the area with gear that is stowed and not available for immediate use is exempt from this prohibition.

[74 FR 20535, May 4, 2009]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 648.15 Facilitation of enforcement.

(a) *General.* See § 600.504 of this chapter.

(b) *Special notification requirements applicable to surfclam and ocean quahog vessel owners and operators.* (1) *Surfclam and ocean quahog open access permitted vessels.* Vessel owners or operators issued an open access surfclam or ocean quahog open access permit for fishing in the ITQ Program, as specified at § 648.74, are required to declare their intended fishing activity via VMS prior to leaving port.

(2) *Maine mahogany quahog limited access permitted vessels.* Beginning January 1, 2009, vessel owners or operators issued a limited access Maine mahogany quahog permit for fishing for Maine mahogany quahogs in the Maine mahogany quahog zone, as specified at § 648.78, are required to declare via VMS, prior to leaving port, and entering the Maine mahogany quahog zone, their intended fishing activity, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(*1*).

(3) *Declaration out of surfclam and ocean quahog fisheries.* Owners or operators that are transiting between ports or fishing in a fishery other than surfclams and ocean quahogs must either declare out of fisheries or declare the appropriate fishery, if required, via the VMS unit, before leaving port. The owner or operator discontinuing a fishing trip in the EEZ or Maine mahogany quahog zone must return to port and offload any surfclams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(4) *Inspection by authorized officer.* The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

(5) *Authorization for use of fishing trip notification via telephone.* The Regional Administrator may authorize or require the notification of surfclam or ocean quahog fishing trip information via a telephone call to the NMFS Office of Law Enforcement nearest to the point of offloading, instead of the use of VMS. If authorized, the vessel owner or operator must accurately provide the following information prior to departure of his/her vessel from the dock to fish for surfclams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surfclams or ocean quahogs; expected date, time, and location of landing; and name of individual providing notice. If use of a telephone call-in notification is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, e-mail, or other appropriate means.

(c) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16 when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Authorized officers must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Retention of haddock by herring vessels using midwater trawl gear.* A vessel

issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may not discard any haddock that has been brought on the deck or pumped into the hold.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 27485, May 19, 1998; 71 FR 46875, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007; 72 FR 51703, Sept. 11, 2007; 76 FR 56997, Sept. 15, 2011; 76 FR 60649, Sept. 29, 2011]

§ 648.16 Penalties.

See § 600.735.

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Fisheries included under exemption*—(1) *NE multispecies*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, minimum fish size, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82, 648.83, and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(3) *Skates*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from skate permit and possession limit restrictions, specified in §§ 648.4 and 648.322, respectively, and from Atlantic sea scallop, NE multispecies, or monkfish DAS effort control restrictions specified in §§ 648.53, 648.82, and 648.92, respectively, and from mesh size and gear restrictions specified in §§ 648.51, 648.80, and 648.91, respectively, while transiting the EEZ with skates on board the vessel, or landing skates in U.S. ports that were caught while fishing in the NAFO Regulatory Area. These vessels may possess, retain, and land barndoor skate; however, they may not possess, retain, or land other prohibited skate species specified in §§ 648.14(v) and 648.322(g).

(b) *General requirements*. (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with the definition of not available for immediate use as defined in § 648.2; and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[70 FR 21942, Apr. 28, 2005, as amended at 79 FR 52580, Sept. 4, 2014; 83 FR 48987, Sept. 28, 2018; 84 FR 34814, July 19, 2019]

§ 648.18 Standardized bycatch reporting methodology.

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans by the *Standardized Bycatch Reporting Methodology: An Omnibus Amendment to the Fishery Management Plans of the Mid-Atlantic and New England Regional Fishery Management Councils*, completed March 2015, also known as the SBRM Omnibus Amendment, by the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, National Marine Fisheries Service Greater Atlantic Regional Fisheries Office, and

National Marine Fisheries Service Northeast Fisheries Science Center: Atlantic Bluefish; Atlantic Mackerel, Squid, and Butterfish; Atlantic Sea Scallop; Atlantic Surfclam and Ocean Quahog; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Monkfish; Northeast Multispecies; Northeast Skate Complex; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; and Tilefish. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the SBRM Omnibus Amendment from the Greater Atlantic Regional Fisheries Office (*www.greateratlantic.fisheries.noaa.gov*, 978–281–9300). You may inspect a copy at the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

[80 FR 37193, June 30, 2015]

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Mid-Atlantic Fishery Management Council Acceptable Biological Catch (ABC) control rules.

The SSC shall review the following criteria, and any additional relevant information, to assign managed stocks to one of four types of control rules based on the species' assessments and its treatment of uncertainty when developing ABC recommendations. The SSC shall review the ABC control rule assignment for stocks each time an ABC is recommended. ABCs may be recommended for up to three years for all stocks, with the exception of five years for spiny dogfish. The SCC may specify constant, multi-year ABCs, derived from the average of ABCs (or average risk of overfishing) if the average probability of overfishing remains between zero and 40 percent, and does not exceed a 50-percent probability in any given year. The average ABCs may remain constant for up to three years for all stocks, with the exception of five years for spiny dogfish. The SSC may deviate from the control rule methods and recommend an ABC that differs from the result of the ABC control rule application; however, any such deviation must include the following: A description of why the deviation is warranted; description of the methods used to derive the alternative ABC; and an explanation of how the deviation is consistent with National Standard 2. The four types of ABC control rules are described below.

(a) *ABC control rule for a stock with an OFL probability distribution that is analytically-derived and accepted by the SSC.* (1) The SSC determines that the assessment OFL and the assessment's treatment of uncertainty are acceptable, based on the following:

(i) All important sources of scientific uncertainty are captured in the stock assessment model;

(ii) The probability distribution of the OFL is calculated within the stock assessment and adequately describes the OFL uncertainty;

(iii) The stock assessment model structure and treatment of the data prior to use in the model include relevant details of the biology of the stock, fisheries that exploit the stock, and data collection methods;

(iv) The stock assessment provides the following estimates: Fishing mortality rate (F) at MSY or an acceptable proxy maximum fishing mortality threshold (MFMT) to define OFL, biomass, biological reference points, stock status, OFL, and the respective uncertainties associated with each value; and

(v) No substantial retrospective patterns exist in the stock assessment estimates of fishing mortality, biomass, and recruitment.

(2) An ABC for stocks with an accepted OFL probability distribution that is analytically-derived will be determined by applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(b) *ABC control rule for a stock with an OFL probability distribution that is modified by the assessment team and accepted*

by the SSC. (1) The SSC determines the assessment OFL is acceptable and the SSC accepts the assessment team's modifications to the analytically-derived OFL probability distribution, based on the following:

(i) Key features of the stock biology, the fisheries that exploit it, and/or the data collection methods for stock information are missing from, or poorly estimated in, the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncertainty is not fully promulgated through the stock assessment model and/or some important sources of uncertainty may be lacking;

(iii) The stock assessment provides estimates of the precision of biomass, fishing mortality, and reference points;

(iv) The accuracy of the minimum fishing mortality threshold and projected future biomass is estimated in the stock assessment using ad hoc methods; and

(v) The modified OFL probability distribution provided by the assessment team acceptably addresses the uncertainty of the assessment.

(2) An ABC for stocks with an OFL probability distribution that is modified by the assessment team and accepted by the SSC will be determined by applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL as modified by the assessment team.

(c) *ABC control rule for a stock with an OFL probability distribution that is modified by the SSC*. (1) The SSC determines the assessment OFL is acceptable but the SSC derives the appropriate uncertainty for OFL based on meta-analysis and other considerations. This requires the SSC to determine that the stock assessment does not contain an estimated probability distribution of OFL or the OFL probability distribution in the stock assessment is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) An ABC for stocks with an OFL probability distribution that is modified by the SSC will be determined by either:

(i) Applying the acceptable probability of overfishing from the MAFMC's risk policy found in § 648.21(a) through (d) to the SSC-adjusted OFL probability distribution. The SSC will use default assignments of uncertainty in the adjusted OFL probability distribution based on literature review and valuation of control rule performance; or,

(ii) If the SSC cannot develop an OFL probability distribution, a default control rule of 75 percent of the F_{MSY} value will be applied to derive ABC.

(d) *ABC control rule for when an OFL cannot be specified*. (1) The SSC determines that the OFL cannot be specified given the available information.

(2) An ABC for stocks with an OFL that cannot be specified will be determined by using control rules based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

[83 FR 15512, Apr. 11, 2018]

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan*. The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (e.g., 75-percent probability of not exceeding rebuilding F, which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan*. (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (*i.e.*, the

stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (*i.e.*, the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (*i.e.*, the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 40 percent as the B/B_{MSY} ratio becomes less 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(d) *Stock without an OFL or OFL proxy*. (1) If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

(2) The SSC may deviate from paragraph (d)(1) of this section, provided that the following two criteria are met: Biomass-based reference points indicate that the stock is greater than B_{MSY} and stock biomass is stable or increasing, or if biomass based reference points are not available, best available science indicates that stock biomass is stable or increasing; and the SSC provides a determination that, based on best available science, the recommended increase to the ABC is not expected to result in overfishing. Any such deviation must include a description of why the increase is warranted, description of the methods used to derive the alternative ABC, and a certification that the ABC is not likely to result in overfishing on the stock.

[76 FR 60616, Sept. 29, 2011, as amended at 77 FR 51857, Aug. 27, 2012]

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications*. The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) *Illex squid*—Initial OY (IOY), including Research Set-Aside (RSA), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) *Butterfish*—ACL; ACT including RSA, DAH, DAP; bycatch level of the total allowable level of foreign fishing (TALFF), if any; and butterfish mortality cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) *Atlantic mackerel*—ACL; commercial ACT, including RSA, DAH, mackerel Tier 3 allocation (up to 7 percent of the DAH), DAP; joint venture processing (JVP) if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) *Longfin squid*—

(i) IOY, including RSA, DAH, and DAP for longfin squid, which, subject

to annual review, may be specified for a period of up to 3 years; and

(ii) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review the best available data to recommend specifications consistent with the following:

(1) Longfin and/or *Illex squid.* (i) The ABC for any fishing year must be either the maximum OY, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY. The OYs specified during a fishing year may not exceed the following amounts:

(A) Longfin squid—The catch associated with a fishing mortality rate of $F_{Threshold}$.

(B) *Illex squid*—Catch associated with a fishing mortality rate of F_{MSY}.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of RSA and DAH. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RSA, if applicable.

(2) *Mackerel*—(i) *ABC.* The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *ACL.* The ACL or Domestic ABC is calculated using the formula ACL/Domestic ABC = stock-wide ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

(iii) *OY.* OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the specifications process.

(A) *Commercial sector ACT.* Commercial ACT is composed of RSA, DAH, Tier 3 allocation (up to 7 percent of DAH), dead discards, and TALFF, if any. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, Tier 3 allocation (up to 7 of the DAH), DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

(*1*) Total world export potential of mackerel producing countries.

(*2*) Total world import demand of mackerel consuming countries.

(*3*) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(*4*) Increased/decreased revenues to the U.S. from foreign fees.

(*5*) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(*6*) Increased/decreased revenues to U.S. processors and exporters.

(*7*) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(*8*) Increases/decreases in U.S. processing productivity.

(*9*) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(B) *Recreational sector ACT.* Recreational ACT is composed of RSA, dead discards, and the Recreational Harvest Limit (RHL).

(v) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the mackerel ACL at least every 5 years.

(A) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any two consecutive years), the Squid, Mackerel, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(B) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(C) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

(vi) *River herring and shad catch cap.* The Monitoring Committee shall provide recommendations regarding a cap on the catch of river herring (alewife and blueback) and shad (American and hickory) in the Atlantic mackerel fishery based on best available scientific information, as well as measures (seasonal or regional quotas, closure thresholds) necessary for implementation.

(3) *Butterfish*—(i) *ABC.* The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The butterfish ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL.* The butterfish ACL will be set equal to the butterfish ABC.

(iii) *OY.* OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors.

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend the butterfish ACT as part of the specifications process. The ACT is composed of RSA, DAH, dead discards, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RSA, if applicable.

(v) The butterfish mortality cap will be based on a portion of the ACT (set annually during specifications) and the specified cap amount will be allocated to the longfin squid fishery as follows: Trimester I—43 percent; Trimester II—17 percent; and Trimester III—40 percent.

(vi) Any underages of the cap for Trimester I that are greater than 25 percent of the Trimester I cap will be reallocated to Trimester II and III (split equally between both trimesters) of the same year. The reallocation of the cap from Trimester I to Trimester II is limited, such that the Trimester II cap may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of the cap for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of the cap for Trimester I and II will be subtracted from Trimester III of the same year.

(vii) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterfish ACL in conjunction with review for the mackerel fishery, as outlined in this section.

(4) *Additional measures.* The Monitoring Committee may also provide recommendations on the following items, if necessary:

(i) Observer provisions to maximize sampling at § 648.11(n)(2);

(ii) Exceptions for the requirement to pump/haul aboard all fish from net for inspection by at-sea observers in § 648.11(n)(3);

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) RSA set from a range of 0 to 3 percent of:

(i) The IOY for longfin squid and/or *Illex*.

(ii) The commercial and/or recreational ACT for mackerel.

(iii) The ACT for butterfish.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of longfin squid, *Illex* squid, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(vi), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(a)(5)(iii) and the incidental mackerel permit at § 648.4(a)(5)(iv).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for longfin squid and *Illex* squid, and allocation for the Tier 3 Limited Access Mackerel permit.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational allocation for mackerel.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) Changes, as appropriate, to the SBRM, including the coefficient of variation (CV) based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(14) Modification of existing accountability measures (AMs) utilized by the Monitoring Committee.

(d) *Annual fishing measures*. (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Regional Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded. After the Regional Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments*. The specifications established pursuant to this

section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the FEDERAL REGISTER.

(f) *Distribution of annual longfin squid commercial quota.* (1) A commercial quota for longfin squid will be allocated annually into trimester periods, based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research set-aside (RSA) quota.* Prior to the MAFMC's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the MAFMC.

(2) NMFS will convene a review panel, including the MAFMC's Comprehensive Management Committee and technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, and provide final approval of the projects. The Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips must be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the FEDERAL REGISTER in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the MAFMC; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the MAFMC, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.12(b).

[76 FR 60616, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 76 FR 81848, Dec. 29, 2011; 77 FR 16480, Mar. 21, 2012; 78 FR 3353, Jan. 16, 2013; 79 FR 10048, Feb. 24, 2014; 79 FR 18481, Apr. 2, 2014; 80 FR 37194, June 30, 2015; 80 FR 48248, Aug. 12, 2015; 83 FR 64267, Dec. 14, 2018]

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) *Mesh restrictions and exemptions.* Vessels subject to the mesh restrictions in this paragraph (a) must render any net, or any piece of net, with a mesh size smaller than that specified in paragraphs (a)(1), (2), and (3) of this section not available for immediate use as defined in § 648.2.

(1) *Butterfish fishery.* Owners or operators of otter trawl vessels possessing more than 5,000 lb (2.27 mt) of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (7.62 cm) diamond or square mesh, as measured by methods specified in § 648.80(f), applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(2) *Longfin squid fishery.* (i) Owners or operators of otter trawl vessels possessing longfin squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2⅛ inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1⅞ inches (48 mm) during Trimester II (May–Aug), diamond or square mesh, as measured by methods specified in § 648.80(f), applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope.

(ii) *Jigging exemption.* During closures of the longfin squid fishery resulting from the butterfish mortality cap, described in § 648.24(c)(3), vessels fishing for longfin squid using jigging gear are exempt from the closure possession limit specified in § 648.26(b), provided that all otter trawl gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing butterfish or longfin squid shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net except any of the following materials may be used as specified:

(i) Splitting straps, and/or bull ropes or wire around the entire circumference of the codend provided these materials do not obstruct or constrict the top or the trawl net while it is being towed;

(ii) Net strengtheners (covers) that do not have a mesh opening of less than 5 inches (12.7 cm) diamond or square mesh, as measured by methods specified in § 648.80(f); and

(iii) A liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net, the inside webbing of the codend shall be the same circumference or less than any strengthener and the liner is no more than 2 ft (61 cm) longer than any net strengthener.

(4) *Top of the regulated portion of the net* means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor.

(5) *Illex fishery.* Seaward of the following coordinates, connected in the order listed by straight lines except otherwise noted, otter trawl vessels possessing longfin squid harvested in or from the EEZ and fishing for *Illex* during the months of June, July, August in Trimester II, and September in Trimester III are exempt from the longfin

squid gear requirements specified in paragraph (a)(2) of this section, provided that landward of the specified coordinates they do not have available for immediate use, as defined in § 648.2, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh in Trimester II, and 2⅛ inches (54 mm) diamond mesh in Trimester III, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraphs (a)(2) and (a)(3)(ii) of this section.

Point	N. lat.	W. long.
M0	43°58.0′	[1]
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	[2] 67°10.0′
M10	41°18.6′	[2] 66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′
M25	35°28.0′	[3]

[1] The intersection of 43°58.0′ N. latitude and the US-Canada Maritime Boundary.

[2] Points M9 and M10 are intended to fall along and are connected by the US-Canada Maritime Boundary.

[3] The intersection of 35°28.0′ N. latitude and the outward limit of the U.S. EEZ.

(6) *Mackerel, squid, and butterfish bottom trawling restricted areas*—(i) *Oceanographer Canyon*. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Oceanographer Canyon or be in the Oceanographer Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed and not available for immediate use as defined in § 648.2. Oceanographer Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

OCEANOGRAPHER CANYON

Point	N. lat.	W. long.
OC1	40°10.0′	68°12.0′
OC2	40°24.0′	68°09.0′
OC3	40°24.0′	68°08.0′
OC4	40°10.0′	67°59.0′
OC1	40°10.0′	68°12.0′

(ii) *Lydonia Canyon*. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Lydonia Canyon or be in the Lydonia Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed and not available for immediate use as defined in § 648.2. Lydonia Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

LYDONIA CANYON

Point	N. lat.	W. long.
LC1	40°16.0′	67°34.0′
LC2	40°16.0′	67°42.0′
LC3	40°20.0′	67°43.0′
LC4	40°27.0′	67°40.0′
LC5	40°27.0′	67°38.0′
LC1	40°16.0′	67°34.0′

(b) [Reserved]

(c) *Mesh obstruction or constriction*. The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration, or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

[76 FR 60618, Sept. 29, 2011, as amended at 77 FR 16479, Mar. 21, 2012; 77 FR 51865, Aug. 27, 2012; 78 FR 3354, Jan. 16, 2013; 79 FR 18842, Apr. 4, 2014; 79 FR 52580, 52582, Sept. 4, 2014; 81 FR 24508, May 26, 2016]

§ 648.24 Fishery closures and accountability measures.

(a) *Fishery closure procedures*—(1) *Longfin squid*. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 90 percent of the longfin squid quota is harvested before April 15 of Trimester I and/or August 15 of Trimester II, and when 95 percent of the longfin squid DAH has been harvested in Trimester III. On or after April 15 of Trimester I and/or August 15 of Trimester II, NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of the longfin squid quota is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(2) *Illex*. NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(b) *Mackerel AMs*—(1)(i) *Mackerel commercial sector EEZ closure*. NMFS will close the commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the Atlantic mackerel DAH is harvested if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that 100 percent of the Atlantic mackerel DAH will be landed, NMFS will reduce the possession of Atlantic mackerel in the EEZ for the remainder of the fishing year to the amount specified in § 648.26(a)(2)(ii).

(ii) NMFS will close the Tier 3 commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 mackerel allocation will be harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the Tier 3 commercial mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

(2) *Mackerel commercial landings overage repayment*. If the mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Non-landing AMs*. In the event that the ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial ACT was exceeded will be deducted from the following year's commercial ACT, as a single-year adjustment.

(4) *Mackerel recreational AMs*. If the mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

(i) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown*. If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate caused the most recent year's ACL to be exceeded will be deducted from the following year's recreational ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding*. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) *If the ACL has been exceeded*. If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and

conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(B) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made, as described below. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(*1*) *Adjustment to ACT.* If an adjustment to the following year's ACT is required, then the recreational ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient specified in paragraph (b)(4)(ii)(B)(*2*) of this section.

(*2*) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(iii) *If biomass is above* B_{MSY}. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(5) *Mackerel ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the FEDERAL REGISTER, by May 15 of the fishing year in which the deductions will be made.

(6) *River herring and shad catch cap.* The river herring and shad cap on the mackerel fishery applies to all trips that land more than 20,000 lb (9.08 mt) of mackerel. NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator project that 95 percent of the river herring/shad catch cap has been harvested. Following closures of the directed mackerel fishery, vessels must adhere to the possession restrictions specified in § 648.26.

(c) *Butterfish AMs*—(1) *Directed butterfish fishery closure.* When the butterfish catch reaches the butterfish closure threshold as determined in the annual specifications, NMFS shall implement a 5,000 lb (2,268 kg) possession limit for vessels issued a butterfish moratorium permit that are fishing with a minimum mesh size of 3 inches (76 mm). When NMFS projects that the butterfish catch has reached the butterfish DAH, as determined in the annual specifications, NMFS shall implement a 600 lb (272 kg) possession limit for all vessels issued a longfin squid or butterfish moratorium permit, or a squid/butterfish incidental catch permit.

(2) *Butterfish ACL overage repayment.* If the butterfish ACL is exceeded, then catch in excess of the ACL will be deducted from the ACL the following year, as a single-year adjustment.

(3) *Butterfish mortality cap on the longfin squid fishery.* NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of each Trimester's butterfish mortality cap allocation has been harvested.

(4) *Butterfish ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the FEDERAL REGISTER, by May 15 of the fishing year in which the deductions will be made.

(5) *Butterfish allocation transfer.* NMFS may transfer up to 50 percent of any unused butterfish allocation from the butterfish DAH to the butterfish

mortality cap on the longfin squid fishery if the butterfish catch in the longfin squid fishery is likely to result in a closure of the longfin squid fishery, and provided the transfer does not increase the likelihood of closing the directed butterfish fishery. NMFS may instead transfer up to 50 percent of the unused butterfish catch from the butterfish mortality cap allocation to the butterfish DAH if harvest of butterfish in the directed butterfish fishery is likely to exceed the butterfish DAH, and provided the transfer of butterfish allocation from the butterfish mortality cap allocation does not increase the likelihood of closing the longfin squid fishery due to harvest of the butterfish mortality cap. NMFS would make this transfer on or about November 15 each fishing year, in accordance with the Administrative Procedure Act.

(d) *Notification*. Upon determining that a closure or trip limit reduction is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure or trip limit reduction to all holders of mackerel, squid, and butterfish fishery permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure or trip limit reduction to recreational participants in the fishery; and publish notification of the closure or trip limit reduction in the FEDERAL REGISTER.

[76 FR 60619, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 77 FR 16480, Mar. 21, 2012; 77 FR 3354, Jan. 16, 2013; 78 FR 76762, Dec. 19, 2013; 79 FR 18843, Apr. 4, 2014; 79 FR 18481, Apr. 2, 2014; 80 FR 14874, Mar. 20, 2015; 80 FR 48248, Aug. 12, 2015; 83 FR 64268, Dec. 14, 2018; 83 FR 65314, Dec. 20, 2018]

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) *Within season management action*. The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process*. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories:

(i) Adjustments within existing ABC control rule levels;

(ii) Adjustments to the existing MAFMC risk policy;

(iii) Introduction of new AMs, including sub-ACTs;

(iv) Minimum and maximum fish size;

(v) Gear restrictions, gear requirements or prohibitions;

(vi) Permitting restrictions;

(vii) Recreational possession limit, recreational seasons, and recreational harvest limit;

(viii) Closed areas;

(ix) Commercial seasons, commercial trip limits, commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch;

(x) Annual specification quota setting process;

(xi) FMP Monitoring Committee composition and process;

(xii) Description and identification of EFH (and fishing gear management measures that impact EFH);

(xiii) Description and identification of habitat areas of particular concern;

(xiv) Overfishing definition and related thresholds and targets;

(xv) Regional gear restrictions, regional season restrictions (including option to split seasons), regional management;

(xvi) Restrictions on vessel size (LOA and GRT) or shaft horsepower;

(xvii) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

(xviii) Set aside quota for scientific research;

(xix) Process for inseason adjustment to the annual specification;

(xx) Mortality caps for river herring and shad species, time/area management for river herring and shad species, and provisions for river herring and shad incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s);

(xxi) The definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s);

(xxii) The threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s), the distance that vessels would be required to move from the area(s), and the time that vessels would be required to remain out of the area(s);

(xxiii) Modifications to the broad and discrete deep-sea coral zone boundaries and the addition of discrete deep-sea coral zones;

(xxiv) Modifications to the management measures within the Frank R. Lautenberg Deep-sea Coral Protection Area and implementation of special access programs to the Frank R. Lautenberg Deep-sea Coral Protection Area; and

(xxv) Any other management measures currently included in the FMP.

(2) Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

(3) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(4) *NMFS action*. If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(5) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take

emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[76 FR 60620, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 76 FR 81848, Dec. 29, 2011; 79 FR 10048, Feb. 24, 2014; 80 FR 37194, June 30, 2015; 81 FR 90250, Dec. 14, 2016; 83 FR 64268, Dec. 14, 2018]

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) *Atlantic mackerel*—(1) *Initial possession limits*. A vessel must be issued a valid limited access mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel from or in the EEZ per trip, provided that the fishery has not been closed, as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1 Limited Access Mackerel Permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 95 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i).

(ii) A vessel issued a Tier 2 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 95 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i).

(iii) A vessel issued a Tier 3 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the Tier 3 allocation has been harvested, or 95 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i) and (ii).

(iv) A vessel issued an open access mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(v) Both vessels involved in a pair trawl operation must be issued a valid mackerel permits to fish for, possess, or land Atlantic mackerel in the EEZ. Both vessels must be issued the mackerel permit appropriate for the amount of mackerel jointly possessed by both of the vessels participating in the pair trawl operation.

(2) *Closure possession restrictions*—(i) *Limited access fishery*. During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 95 percent of the DAH is harvested, vessels issued a limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. Pursuant to § 648.24(b)(1)(ii), when 90 percent of the Tier 3 allocation is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours

(ii) *Entire commercial fishery*. During a closure of the directed commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 100 percent of the DAH is harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.26 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Longfin squid*—(1) *Directed fishery*. A vessel must be issued a valid longfin squid moratorium permit to fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ

per trip. Unless the directed fishery is closed pursuant to paragraph § 648.24(a)(1), the following longfin squid possession limits apply:

(i) *Tier 1 moratorium permits*. A vessel issued a Tier 1 longfin squid moratorium permit may possess an unlimited amount of longfin squid per trip.

(ii) *Tier 2 moratorium permits*. A vessel issued a Tier 2 longfin squid moratorium permit may not fish for, possess, or land more than 5,000 lb (2,268 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(iii) *Tier 3 moratorium permits*. A vessel issued a Tier 3 longfin squid moratorium permit may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(2) *Incidental fishery*. (i) A vessel issued an open access squid/butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip, and may only land longfin squid once on any calendar day.

(ii) During a closure of the directed longfin squid fishery in either Trimester I or III pursuant to paragraph § 648.24(a)(1), a vessel may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iii) Unless otherwise specified in paragraph (b)(2)(iv) of this section, during a closure of the directed longfin squid fishery in Trimester II pursuant to § 648.24(a)(1), a vessel may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iv) During a closure of the directed longfin squid fishery in Trimester II, a vessel issued either a Tier 1 or Tier 2 longfin squid moratorium permit may possess more than 250 lb (113 kg) of longfin squid per trip, provided the following conditions are met:

(A) The vessel operator has declared into the directed *Illex* squid fishery via VMS, as specified in § 648.10;

(B) The vessel is seaward of the coordinates specified at § 648.23(a)(5);

(C) The vessel possesses more than 10,000 lb (4,536 kg) of *Illex* squid on board;

(D) The vessel possesses less than 15,000 lb (6,803 kg) of longfin squid if issued a Tier 1 longfin squid moratorium permit or 5,000 lb (2,268 kg) of longfin squid if issued a Tier 2 longfin squid moratorium permit; and

(E) All fishing gear is stowed and rendered not available for immediate use, as defined in § 648.2, once the vessel is landward of the coordinates specified at § 648.23(a)(5).

(c) *Illex squid*—(1) *Directed fishery*. A vessel must be issued a valid *Illex* squid moratorium permit to fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid from or in the EEZ per trip. Unless the directed fishery is closed pursuant to § 648.24(a)(2), a vessel issued an *Illex* moratorium permit may possess an unlimited amount of *Illex* squid per trip.

(2) *Incidental fishery*. A vessel may not fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid per trip at any time, and may only land *Illex* squid once on any calendar day if:

(i) A vessel is issued an open access squid/butterfish incidental catch permit; or

(ii) A vessel is issued an *Illex* moratorium permit and the directed fishery is closed pursuant to § 648.24(a)(2).

(d) *Butterfish*. Any vessel issued a butterfish permit under this part may only land butterfish once on any calendar day.

(1) *Directed fishery*. A vessel must be issued a butterfish moratorium permit to fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip.

(i) *Vessels fishing with larger mesh*. A vessel issued a butterfish moratorium permit fishing with a minimum mesh size of 3 inches (76 mm) is authorized to fish for, possess, or land butterfish with no possession restriction in the EEZ per trip, provided that directed butterfish fishery has not been closed and the reduced possession limit has not been implemented, as specified in § 648.24(c)(1). When butterfish harvest is projected to reach the threshold for the butterfish fishery, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfish per trip at any

time. When butterfish harvest is projected to reach the DAH limit, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any time.

(ii) *Vessels fishing with smaller mesh.* A vessel issued a butterfish moratorium permit fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfish per trip at any time, provided that butterfish harvest has not reached the DAH limit and the reduced possession limit has not been implemented, as described in § 648.24(c)(1). When butterfish harvest is projected to reach the DAH limit, as described in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any time.

(2) *Incidental fishery.* A vessel issued a squid/butterfish incidental catch permit, regardless of mesh size used, may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any.

[76 FR 60621, Sept. 29, 2011, as amended at 76 FR 68656, Nov. 7, 2011; 77 FR 16480, Mar. 21, 2012; 77 FR 23636, Apr. 20, 2012; 78 FR 3354, Jan. 16, 2013; 79 FR 18843, Apr. 4, 2014; 80 FR 14875, Mar. 20, 2015; 81 FR 24509, Apr. 26, 2016; 83 FR 64268, Dec. 14, 2018; 83 FR 65315, Dec. 20, 2018]

Subpart C—Management Measures for Atlantic Salmon

§ 648.40 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 648.41 Framework specifications.

(a) *Within season management action.* The New England Fishery Management Council (NEFMC) may, at any time, initiate action to implement, add to or adjust Atlantic salmon management measures to:

(1) Allow for Atlantic salmon aquaculture projects in the EEZ, provided such an action is consistent with the goals and objectives of the Atlantic Salmon FMP; and

(2) Make changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(b) *Framework process.* After initiation of an action to implement, add to or adjust an Atlantic salmon management measure to allow for an Atlantic salmon aquaculture project in the EEZ, the NEFMC shall develop and analyze Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on aquaculture management measures must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation.* After developing Atlantic salmon management measures and receiving public testimony, the NEFMC shall make a recommendation to NMFS. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation

to NMFS on whether to issue the management measures as a final rule. If NMFS concurs with the NEFMC's recommendation to issue the management measures as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of measures adopted following their implementation as a final rule.

(d) *NMFS action*. If the NEFMC's recommendation includes implementation of management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) NMFS concurs with the NEFMC's recommended management measures and determines that the recommended measures should be issued as a final rule based on the factors specified in paragraph (c)(1) through (4) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(2) NMFS concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(3) NMFS does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[64 FR 40520, July 27, 1999, as amended at 80 FR 37194, June 30, 2015]

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

SOURCE: 69 FR 35215, June 23, 2004, unless otherwise noted.

§ 648.50 Shell-height standard.

(a) *Minimum shell height*. The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (8.9 cm). Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.

(b) *Compliance and sampling*. Any time at landing or after, including when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard shall be determined as follows: Samples of 40 scallops each shall be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are shorter than the shell height specified. The total amount of scallops in possession shall be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions*. Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, defined in § 648.2, or unless the vessel is fishing under the Northeast multispecies or monkfish DAS programs.

(2) *Net requirements*—(i) *Minimum mesh size.* Subject to applicable minimum mesh size restrictions for other fisheries as specified under this part, the mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 600 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.59(g)(2), and the scallop dredge exemption areas specified in § 648.80. However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.

(3) *Minimum ring size.* (i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.59(b)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two

rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, *i.e.*, ''hangers,'' are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions as a proactive accountability measure for bycatch.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, limited access and limited access general category IFQ vessels may not fish for scallops with a dredge having more than seven rows of non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top) (a copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using a wedge-shaped gauge having a taper of 0.79 inches (2 cm) in 3.15 inches (8 cm) and a thickness of 0.09 inches (2.3 mm), inserted into the meshes under a pressure or pull of 17.64 lb (8 kg). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes. The mesh in the twine top must be measured along the length of the twine top, running parallel to a longitudinal axis, and be at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

(5) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—(i) *Requirement to use chain mats.* See § 223.206(d)(11) of this chapter for chain mat requirements for scallop dredges.

(ii) *Requirement to use a turtle deflector dredge (TDD) frame*—(A) From May 1 through November 30, any limited access scallop vessel using a dredge, regardless of dredge size or vessel permit category, or any LAGC IFQ scallop vessel fishing with a dredge with a width of 10.5 ft (3.2 m) or greater, that is fishing for scallops in waters west of 71° W. long., from the shoreline to the outer boundary of the EEZ, must use a TDD. The TDD requires five modifications to the rigid dredge frame, as specified in paragraphs (b)(5)(ii)(A)(*1*) through (*5*) of this section. See paragraph (b)(5)(ii)(D) of this section for more specific descriptions of the dredge elements mentioned below.

(*1*) The cutting bar must be located in front of the depressor plate.

(*2*) The acute angle between the plane of the bale and the strut must be less than or equal to 45 degrees.

(*3*) All bale bars must be removed, except the outer bale (single or double) bars and the center support beam, leaving an otherwise unobstructed space between the cutting bar and forward bale wheels, if present. The center support beam must be less than 6 inches (15.24 cm) wide. For the purpose of flaring and safe handling of the dredge, a minor appendage not to exceed 12 inches (30.5 cm) in length may be attached to each of the outer bale bars. If the flaring bar is attached in a u-shape, none of the three sides of the flaring bar shall exceed 12 inches (30.5 cm) in length. The appendage shall at no point

be closer than 12 inches (30.5 cm) to the cutting bar.

(*4*) Struts must be spaced 12 inches (30.5 cm) apart or less from each other, along the entire length of the frame.

(*5*) Unless exempted, as specified in paragraph (b)(5)(ii)(B) of this section, the TDD must include a straight extension (''bump out'') connecting the outer bale bars to the dredge frame. This ''bump out'' must exceed 12 inches (30.5 cm) in length, as measured along the inside of the bale bar from the front of the cutting bar to the first bend in the bale bar.

(B) A limited access scallop vessel that uses a dredge with a width less than 10.5 ft (3.2 m) is required to use a TDD, except that such a vessel is exempt from the ''bump out'' requirement specified in paragraph (b)(5)(ii)(A)(*5*) of this section. This exemption does not apply to LAGC vessels that use dredges with a width of less than 10.5 ft (3.2 m), because such vessels are exempted from the requirement to use a TDD, as specified in paragraph (b)(5)(ii) of this section.

(C) A vessels subject to the requirements in paragraph (b)(5)(ii) of this section transiting waters west of 71° W. long., from the shoreline to the outer boundary of the EEZ, is exempted from the requirement to only possess and use TDDs, provided the dredge gear is stowed and not available for immediate use as defined in § 648.2.

(D) *TDD-related definitions.* (*1*) The cutting bar refers to the lowermost horizontal bar connecting the outer bails at the dredge frame.

(*2*) The depressor plate, also known as the pressure plate, is the angled piece of steel welded along the length of the top of the dredge frame.

(*3*) The struts are the metal bars connecting the cutting bar and the depressor plate.

(c) *Crew restrictions.* A limited access vessel participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, and a limited access vessel participating in the Sea Scallop Area Access Program as specified in § 648.59 may have no more than eight people aboard, including the operator, when not docked or moored in port, except as follows:

(1) [Reserved]

(2) A vessel participating in the small dredge program is restricted as specified in paragraph (e) of this section;

(3) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(4) A certified at-sea observer is on board, as required by § 648.11(g).

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 600 lb (272.2 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to, and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board. However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and no more than one complete spare dredge could be made from these component's parts.

(3) The vessel may have no more than five people, including the operator, on board, except as follows:

(i) A vessel participating in the Sea Scallop Area Access Program as specified in § 648.60 may have no more than six people, including the operator, on board.

(ii) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

(f) *Restrictions on the use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59, may not fish for scallops with a trawl net in the Closed Area 1, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60.

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

[69 FR 35215, June 23, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.51, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272.2 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked, or 25 bu (8.81 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ or NGOM scallop permit that is not declared into the IFQ or NGOM scallop fishery as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(5).

(e) Owners or operators of vessels issued limited access permits are prohibited from fishing for, possessing, or

landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) A limited access vessel or an LAGC vessel that is declared into the Sea Scallop Area Access Program as described in § 648.59, may not possess more than 50 bu (17.6 hL) or 75 bu (26.4 hL), respectively, of in-shell scallops outside of the Access Areas described in § 648.60.

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, an allowance of scallops in addition to the possession limit, as established by the Regional Administrator in accordance with § 648.59(d), provided the observer set-aside specified in § 648.59(d)(1) has not been fully utilized. For example, if the LAGC IFQ vessel possession limit is 600 lb (272.2 kg) and the additional allowance to defray the cost of an observer is 200 lb (90.7 kg), the vessel could retain up to 800 lb (362.9 kg) when carrying an observer, regardless of trip length. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation, and it may land it on a subsequent trip. However, the vessel may not exceed the IFQ trip possession limit as described in § 648.52(a) unless it is actively carrying an observer.

[73 FR 20122, Apr. 14, 2008, as amended at 74 FR 20555, May 4, 2009; 75 FR 36569, June 28, 2010; 76 FR 43763, July 21, 2011; 78 FR 27100, May 9, 2013; 81 FR 26375, May 4, 2016; 81 FR 76521, Nov. 3, 2016; 82 FR 15161, Mar. 27, 2017; 84 FR 11442, Apr. 1, 2019]

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) The following determinations and allocations for the sea scallop rotational areas are defined as follows and shall be established through the specifications or framework adjustment process:

(1) *OFL.* OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (*i.e.* F) associated with OFL shall be the threshold F, above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as defined in paragraph (a) of this section.

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as defined in paragraph (a)(3) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) *Overall ABC/ACL and APL*—(i) *Overall ABC/ACL.* The overall ABC for sea scallop fishery shall be the catch level that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. The overall ACL shall be equal to the ABC for the scallop fishery, minus discards (an estimate of both incidental and discard mortality). The ABC/ACL, after the discards and deductions specified in paragraph (a)(4) of this section are removed, shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a LAGC permit, and LAGC vessels as defined in paragraphs (a)(5) and (6) of this section, after the deductions outlined in paragraph (a)(4) of this section.

(ii) *APL.* The APL shall be equal to the combined projected landings by the limited access and LAGC IFQ fleets in both the open area and access areas, after set-asides (RSA and observer) and incidental landings are accounted for,

for a given fishing year. Projected scallop landings are calculated by estimating the landings that will come from open and access area effort combined for both limited access and LAGC IFQ fleets. These projected landings shall not exceed the overall ABC/ACL and ACT, as described in paragraph (a) of this section.

(4) *Deductions from ABC/ACL.* Incidental catch, as defined in paragraph (a)(7) of this section, shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in § 648.56(d) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing sub-ACLs for the limited access and LAGC fleets, as specified in paragraphs (a)(5) and (6) of this section.

(5) *Limited access fleet sub-ACL and sub-ACT*—(i) *Limited access fleet sub-ACL.* After applying the deductions as specified in paragraph (a)(4) of this section, the limited access scallop fleet shall be allocated a sub-ACL equal to 94.5 percent of the ABC/ACL.

(ii) *Limited access fleet sub-ACT.* The ACT for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL.

(6) *LAGC IFQ fleet sub-ACL, sub-ACT, and annual allocation*—(i) *LAGC IFQ fleet sub-ACL.* After applying the deductions as specified in paragraph (a)(4) of this section, the LAGC IFQ fleet shall be allocated a sub-ACL equal to 5.5 percent of the ABC/ACL, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in paragraph (c)(1) of this section.

(ii) *LAGC IFQ fleet sub-ACT.* The LAGC IFQ fishery sub-ACT shall be equal to the LAGC IFQ fishery's sub-ACL. The sub-ACT for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ABC/ACL specified in paragraph (a)(3) of this section, after applying the deductions as specified in paragraph (a)(4) of this section. The sub-ACT for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(3) of this section, after applying the deductions as specified in paragraph (a)(4) of this section.

(iii) *LAGC IFQ fleet annual allocation.* (A) The annual allocation for the LAGC IFQ fishery for vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit shall be equal to 5 percent of the APL. The annual allocation for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the APL.

(B) Standardized default LAGC IFQ allocation. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, after the first-year allocation expires, the second-year default allocation, as described in § 648.55(a), shall be set at 75 percent of the first-year allocation for all vessels issued an LAGC IFQ scallop permit and not also issued a limited access permit and for vessels issued both an LAGC IFQ scallop permit and a limited access scallop permit. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

(7) *Scallop incidental catch target TAC.* The annual incidental catch target TAC is the catch available for harvest for vessels with incidental catch scallop permits. This incidental catch target will be removed from the ABC/ACL defined in paragraph (a)(3) of this section prior to establishing the limited access and LAGC IFQ sub-ACLs and sub-ACTs defined in paragraphs (a)(5) and (6) of this section.

(8) The following catch limits will be effective for the 2019 and 2020 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch limits	2019 (mt)	2020 (mt) [1]
Overfishing Limit	73,421	59,447
Acceptable Biological Catch/ACL (discards removed)	57,003	46,028
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	570	460
ACL for fishery	55,843	44,978
Limited Access ACL	52,772	42,504
LAGC Total ACL	3,071	2,474
LAGC IFQ ACL (5 percent of ACL)	2,792	2,249
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	279	225
Limited Access ACT	47,598	38,337
APL (after set-asides removed)	27,209	([1])
Limited Access Projected Landings (94.5 percent of APL)	25,713	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,497	1,122
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,360	1,020
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	136	102

[1] The catch limits for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2020 that will be based on the 2019 annual scallop surveys. The 2020 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in (a)(6)(iii)(B) of this section, the 2020 IFQ annual allocations are set at 75 percent of the 2019 IFQ Annual Allocations.

(b) *DAS specifications and allocations.* DAS specifications and allocations for limited access scallop trips in open areas are defined as follows and shall be specified through the specifications or framework adjustment processes defined in § 648.55, as follows:

(1) *DAS allocations.* DAS allocations shall be determined by distributing the portion of the limited access ACT defined in paragraph (a)(3) of this section, as reduced by access area allocations defined in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations.

(2) *Assignment to DAS categories*—(i) Limited access vessels shall be categorized as full-time, part-time, or occasional. Allocations for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively.

(ii) Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(3) The DAS allocations for limited access scallop vessels for fishing years 2019 and 2020 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2019	2020 [1]
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

[1] The DAS allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment. The 2020 DAS allocations are set at 75 percent of the 2019 allocation as a precautionary measure.

(4) Standardized default DAS allocations. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, after the first-year allocations expire, the second-year default limited access DAS allocations, as described in § 648.55(a), shall be set at 75 percent of the first-year allocation. After the second-year default allocation expires, the third year allocation would be set to zero until replaced by subsequent allocations.

(c) *Accountability measures (AM) for limited access vessels.* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (c)(1) of this section, if the limited access sub-ACL defined in paragraph (a)(5) of this section is exceeded for the applicable fishing year, the DAS for each limited access vessel shall be reduced by an amount equal to

the amount of landings in excess of the sub-ACL divided by the applicable LPUE for the fishing year in which the AM will apply as projected by the specifications or framework adjustment process specified in § 648.55, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the limited access fishery's sub-ACL in Year 1, an open area LPUE of 2,500 lb (1.13 mt) per DAS in Year 2, and 313 full-time vessels, each full-time vessel's DAS for Year 2 would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to paragraph (b)(2) of this section. The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the limited access fishery's sub-ACL in Year 1 would result in the DAS reduction AM in Year 2. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in Year 1 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in Year 2 would be reduced by 1 DAS.

(1) *Limited access AM exception*. If NMFS determines that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.46, the AM specified in paragraph (c) of this section shall not take effect. The fishing mortality rate of 0.46 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.51.

(2) *Limited access fleet AM and exception provision timing*. The Regional Administrator shall determine whether the limited access fleet exceeded its sub-ACL, defined in paragraph (a)(5) of this section, by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the sub-ACL for the limited access fleet was exceeded, and the number of landings in excess of the sub-ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.46. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(d) *End-of-year carry-over for open area DAS*. With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of March of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the sub-ACT for the limited access fleet, as defined in paragraph (a)(5)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (c) of this section would still apply, provided the AM exception specified in paragraph (c)(1) of this section is not invoked.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g) of this section shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

(f) *DAS credits*—(1) *Good Samaritan credit.* A limited access vessel operating under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(2) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement by the operator that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or that are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (d) of this section.

(3) *Limited access scallop vessels fishing under the DAS program and landing scallops at a port located at or south of 39° N. Lat.* If landing scallops at a port located at or south of 39° N. lat., a limited access vessel participating in the scallop DAS program may end its DAS trip once shoreward of the VMS Demarcation Line at or south of 39° N. lat. by declaring out of the scallop fishery. Once declared out of the scallop fishery, the vessel may cross seaward of the VMS Demarcation Line and steam to ports at or south of 39° N. lat., to land scallops while not on a DAS,

provided that the vessel complies with the following requirements:

(i) The vessel must submit a Scallop Pre-landing Notification Form, as specified at § 648.10(f)(4)(iv);

(ii) The vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2;

(iii) The vessel must return directly to port and offload scallops;

(iv) The vessel must land scallops at a port located at or south of 39° N. lat.; and

(v) The vessel may not possess in-shell scallops.

(g) *Set-asides for observer coverage.* (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL defined in paragraph (a)(3) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. This observer set-aside is specified through the specifications or framework adjustment process defined in § 648.55.

(2) At the start of each scallop fishing year, the observer set-aside specified in paragraph (g)(1) of this section initially shall be divided proportionally by access and open areas, based on the amount of effort allocated into each area, in order to set the compensation and coverage rates. NMFS shall monitor the observer set-aside usage and may transfer set-aside from one area to another if one area is using more or less set-aside than originally anticipated. The set-aside may be transferred from one area to another, based on NMFS in-house area-level monitoring that determines whether one area will likely have excess set-aside while another may not. The set-aside shall be considered completely harvested when the full one percent is landed, at which point there would be no more compensation for any observed scallop trip, regardless of area. NMFS shall continue to proactively adjust compensation rates and/or observer coverage levels mid-year in order to minimize the chance that the set-aside would be harvested prior to the end of the FY. Utilization of the set-aside shall be on a first-come, first-served basis. When the set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional scallop catch or DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(3) *DAS set-aside for observer coverage.* A limited access scallop vessel carrying an observer in open areas shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer set-aside amount in the applicable fishing year.

(h) *Annual IFQs*—(1) *IFQ restriction.* For each fishing year of the IFQ program, a vessel issued an IFQ scallop permit may only harvest and land the total amount of scallop meats allocated in accordance with this subpart. Unless otherwise specified in this part, a vessel allocated scallop IFQ may not exceed the possession limits specified in § 648.52 on any trip.

(2) *Calculation of IFQ.* The LAGC IFQ fleet annual allocation as defined in paragraph (a)(6)(iii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *IFQ.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph

(h)(2)(iii) of this section and determined using the steps specified in paragraph (h)(2)(ii) of this section, multiplied by the LAGC IFQ fleet annual allocation as defined in paragraph (a)(6)(iii) of this section.

(ii) *Contribution factor*. An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(2)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E), consistent with confidentiality restrictions of the Magnuson-Stevens Act specified at 16 U.S.C. 1881a.

(A) *Best year determination*. An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004. If a dealer reported more than 400 lb (181.4 kg) of scallops landed on a trip, only 400 lb (181.4 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.4 kg) per trip.

(B) *Years active*. For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports. Scallop landings in the 2004 fishing year must have occurred on or before November 1, 2004.

(C) *Index to determine contribution factor*. For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(*1*) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(*2*) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in paragraph (a)(4) of this section and the method of calculating the IFQ provided in paragraph (h) of this section.

Years active	Index factor
1	0.75
2	0.875
3	1.0
4	1.125
5	1.25

(D) *Contribution factor example*. If a vessel landed 48,550 lb (22,022 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years, the vessel's contribution factor is equal to 60,687 lb (27,527 kg) (48,550 lb (22,022 kg * 1.25).

(iii) *Contribution percentage*. A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and whose owner has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

(iv) *Vessel IFQ Example*. Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with an ACL allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt)).

(v) *End-of-year carry-over for IFQ*. (A) With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of March of

any year may carry over up to 15 percent of the vessel's original IFQ plus the total of IFQ transferred to such vessel minus the total IFQ transferred from such vessel (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (*i.e.*, 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (*i.e.*, 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(vi) *AM for the IFQ fleet*. If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 that lands 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011 would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period that harvests 2,500 lb (1,134 kg) of scallops the first year would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a ''negative'' IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) *IFQ ownership restrictions*—(i) *IFQ scallop vessel IFQ cap*. (A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permit(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-

percent IFQ cap restriction being exceeded.

(ii) *IFQ ownership cap.* (A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) Vessel owners who were initially issued a 2008 IFQ scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(ii)(A) of this section, are eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5-percent ownership restriction being exceeded.

(C) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(iii) *Limited access scallop vessels that have been issued an IFQ scallop permit.* The IFQ scallop vessel IFQ cap and IFQ ownership cap specified in this paragraph (h)(3) do not apply to limited access scallop vessels that are also issued a limited access general category scallop permit because such vessels are already subject to an ownership limitation, as specified in § 648.4(a)(2)(i)(M).

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h)(4), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting the fee for all of its vessels' IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

(i) *Cost recovery fee determination.* The ex-vessel value of scallops shall be determined as an average of the ex-vessel value, as determined by Northeast Federal dealer reports, of all IFQ scallops landed between March 1 and September 30 of the initial year of the IFQ scallop program, and from October 1 through September 30 of each year thereafter.

(ii) *Fee payment procedure.* On or about October 31 of each year NMFS shall mail a cost recovery bill to each IFQ scallop permit holder for the previous cost recovery period. An IFQ scallop permit holder who has incurred a fee must pay the fee to NMFS within 60 days from the date of mailing of the recovery bill. Cost recovery payments shall be made electronically via the Federal web portal, *www.pay.gov,* or other internet sites as designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment website and the paper bill. Payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Payment by check may be authorized by NMFS if it has determined that electronic payment is not possible (for example, if the geographical area of an individual(s) is affected by catastrophic conditions).

(iii) *Payment compliance.* An IFQ scallop permit holder that has incurred an IFQ cost recovery fee must pay the fee to NMFS within 60 days from the date of mailing. If the cost recovery payment, as determined by NMFS, is not

made within 60 days from the date of mailing, NMFS may deny the renewal of the IFQ scallop permit until full payment is received. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the IFQ scallop permit holder has not paid the full amount due, NMFS shall notify the IFQ scallop permit holder by letter. NMFS shall explain the discrepancy and provide the IFQ scallop permit holder 30 days to either pay the amount specified by NMFS or to provide evidence that the amount paid was correct. If the IFQ scallop permit holder submits evidence in support of his/her payment, NMFS shall determine if there is any remaining disagreement as to the appropriate IFQ fee, and prepare a Final Administrative Determination (FAD). The FAD shall set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and decide as to the appropriate disposition of the matter. A FAD shall be the final agency action, and, if the FAD determines that the IFQ scallop permit holder is out of compliance, the FAD shall require payment within 30 days. If a FAD is not issued until after the start of the fishing year, the IFQ scallop permit holder may be authorized to fish temporarily by the Regional Administrator until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the IFQ scallop permit shall not be issued until such terms are met. If NMFS determines that the IFQ scallop permit holder owes additional fees for the previous cost recovery period, and the IFQ scallop permit has already been renewed, NMFS shall issue a FAD, at which point the permit holder shall have 30 days to comply with the terms of the FAD or NMFS may withdraw the issuance of the IFQ scallop permit until such terms are met. If such payment is not received within 30 days of issuance of the FAD, NMFS shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection, and no IFQ permit held by the permit holder may be renewed until the terms of the FAD are met. If NMFS determines that the conditions of the FAD have been met, the IFQ permit holder may renew the IFQ scallop permit(s). If NMFS does not receive full payment prior to the end of the fishing year, the IFQ scallop permit shall be considered voluntarily abandoned, pursuant to §648.4(a)(2)(ii)(K), unless otherwise determined by the Regional Administrator.

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ, once temporarily transferred, cannot be temporarily transferred again to another vessel. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers.* (A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (*i.e.*, leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year.

(B) If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop

permit shall remain valid on the transferor vessel, unless the owner of the transferor vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer that vessel's IFQ to another IFQ scallop vessel, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that the transfer reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ may be temporarily or permanently transferred to a vessel and then temporarily re-transferred (i.e., leased) or permanently re-transferred by such vessel to another vessel in the same fishing year. There is no restriction on how many times IFQ can be re-transferred. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owners of vessels applying for a transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If the applicants are requesting a transfer of IFQ that has already been transferred in a given fishing year, both parties must be up-to-date with all data reporting requirements (e.g., all necessary VMS catch reports, VTR, and dealer data must be submitted) in order for the application to be processed.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's or transferee's vessel or

IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR part 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

[73 FR 20123, Apr. 14, 2008, as amended at 73 FR 30804, May 29, 2008; 74 FR 20555, May 4, 2008; 75 FR 36570, June 28, 2010; 76 FR 43763, 43786, July 21, 2011; 77 FR 16946, Mar. 23, 2012; 77 FR 20739, Apr. 6, 2012; 78 FR 27100, May 9, 2013; 78 FR 42891, July 18, 2013; 79 FR 34260, June 16, 2014; 80 FR 22129, Apr. 21, 2015; 81 FR 26735, May 4, 2016; 81 FR 76521, Nov. 3, 2016; 81 FR 15161, Mar. 27, 2017; 83 FR 17308, Apr. 19, 2018; 84 FR 11442, Apr. 1, 2019]

§ 648.54 State waters exemption.

(a) *State eligibility for exemption.* (1) A state may be eligible for a state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to provide the exemption for such states.

(3) A state that has been issued a state waters exemption under paragraph (a)(4) of this section must immediately notify the Regional Administrator of any changes in its scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act, to eliminate the exemption for that state.

(4) The Regional Administrator has determined that the State of Maine and Commonwealth of Massachusetts both have a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section. In addition, a vessel issued a Federal Northern Gulf of Maine or Limited Access General Category Individual Fishing Quota permit fishing in State of Maine or Commonwealth of Massachusetts waters may fish under their respective state waters exemption specified in paragraph (d) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section.

(b) *Limited access scallop vessel exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption under paragraph (a)(4) of this section, provided the vessel complies with paragraphs (f) through (h) of this section.

(c) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit, an LAGC NGOM, or an LAGC IFQ scallop permit is exempt from the minimum twine top mesh size for scallop dredge gear specified in § 648.51(b)(2) and (b)(4)(iv) while fishing exclusively landward of the outer boundary of the waters of the

State of Maine under the state waters exemption specified in paragraph (a)(4) of this section, provided the vessel is in compliance with paragraphs (d) through (g) of this section.

(d) *NGOM closure exemption.* Any vessel issued a Federal scallop permit may be exempt from the regulations specified in § 648.52(b)(2) requiring that once the NGOM Federal hard TAC is reached, no vessel issued a scallop permit may fish in the NGOM area. This exemption, which a state must apply for through the process specified in paragraph (a) of this section, would allow vessels to continue to fish for scallops within a state's waters inside the NGOM. A state applying for this exemption must clarify to which scallop permit types this exemption would apply.

(e) *Notification requirements.* Vessels fishing under the exemptions specified in paragraph (b), (c) and/or (d) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(f).

(f) *Restriction on fishing in the EEZ.* A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(g) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification through VMS by the participating vessel's owner.

(h) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraph (b) and/or (c) of this section remains subject to all other requirements of this part.

[69 FR 35215, June 23, 2004, as amended at 71 FR 33227, June 8, 2006; 73 FR 20128, Apr. 14, 2008; 74 FR 20555, May 4, 2009; 74 FR 37593, July 30, 2009; 78 FR 27104, May 9, 2013; 80 FR 22131, Apr. 21, 2015; 80 FR 60569, Nov. 6, 2015; 81 FR 76524, Nov. 3, 2016; 82 FR 49299, Oct. 25, 2017]

§ 648.55 Specifications and framework adjustments to management measures.

(a) *Specifications.* (1) The Scallop Plan Development Team (PDT) shall meet at least every two years to assess the status of the scallop resource and to develop and recommend the following specifications for a period of up to 2 years, as well as second or third-year default measures, for consideration by the New England Fishery Management Council's Atlantic Sea Scallop Oversight Committee and Advisory Panel: OFL, overall ABC/ACL, sub-ACLs, sub-ACTs, DAS open area allocations, possession limits, modifications to rotational area management (*e.g.*, schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.), access area limited access poundage allocations and LAGC IFQ fleet-wide trip allocations, annual incidental catch target TAC, and NGOM TAC.

(2) Based on the PDT recommendations and any public comments received, the Atlantic Sea Scallop Oversight Committee shall recommend appropriate specifications to the New England Fishery Management Council.

(3) The Council shall review these recommendations and, after considering public comments, shall recommend appropriate specifications for up to 2 years, as well as second or third-year default measures, to NMFS. NMFS shall approve, disapprove, or partially approve the specifications recommended by the Council and publish the approved specifications in the FEDERAL REGISTER in accordance with the APA.

(4) The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report at least every two years that provides the information and analysis needed to evaluate potential management adjustments. The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(5) The PDT will meet at least once during the interim years to review the status of the stock relative to the overfishing definition if information is available to do so. If the Council determines, based on information provided by the PDT or other stock-related information, that the approved specifications should be adjusted during the 2-year time period, it can do so through the same process outlined in paragraphs (a)(2) through (a)(4) of this section during the interim year.

(6) *Rotational area management guidelines.* The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Rotational Areas where the projected annual change in scallop biomass is less than 15 percent.

(7) *Second and Third-year default specifications.* The specifications action shall include default specifications that shall be effective in the second year after 1-year specifications and the third year after the 2-year specifications expire until replaced by the measures included in the next specifications action. If the specifications action is not published in the FEDERAL REGISTER with an effective date on or before April 1, the following year's default specifications shall be effective beginning April 1 of each fishing year until any new specifications action is implemented and made effective during the second or third year, or for the entire fishing year if the specifications action is not completed or is not implemented by NMFS during the following year. The specifications action shall specify the measures necessary to address inconsistencies between specifications and default allocations for the period after April 1 but before the specifications action is implemented for that year. The default specifications, if implemented, shall remain in effect until they are revised through a subsequent specifications action.

(b) [Reserved]

(c) *OFL, overall ABC/ACL, sub-ACLs, and sub-ACTs.* The Council shall specify OFL, ABC, ACL, and ACT, as defined in § 648.53, for each year covered under the specifications.

(d) *Yellowtail flounder and windowpane flounder sub-ACLs.* The Council shall specify the yellowtail flounder and windowpane flounder sub-ACLs allocated to the scallop fishery through the framework adjustment process specified in § 648.90.

(e) Reserved]

(f) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the Scallop FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures may include specifications measures specified in paragraph (a) of this section, which must satisfy the criteria set forth § 648.53(a) in order to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis. Other measures that may be changed or implemented through framework action include:

(1) Total allowable catch and DAS changes;

(2) Shell height;

(3) Offloading window reinstatement;

(4) Effort monitoring;

(5) Data reporting;

(6) Trip limits;

(7) Gear restrictions;

(8) Permitting restrictions;

(9) Crew limits;

(10) Small mesh line;

(11) Onboard observers;

(12) Modifications to the overfishing definition;

(13) VMS Demarcation Line for DAS monitoring;

(14) DAS allocations by gear type;

(15) Temporary leasing of scallop DAS requiring full public hearings;

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;

(17) Aquaculture enhancement measures and closures;

(18) Closed areas to increase the size of scallops caught;

(19) Modifications to the opening dates of closed areas;

(20) Size and configuration of rotational management areas;

(21) Controlled access seasons to minimize bycatch and maximize yield;

(22) Area-specific trip allocations;

(23) TAC specifications and seasons following re-opening;

(24) Limits on number of area closures;

(25) Set-asides for funding research;

(26) Priorities for scallop-related research that is funded by research TAC set-aside;

(27) Finfish TACs for controlled access areas;

(28) Finfish possession limits;

(29) Sea sampling frequency;

(30) Area-specific gear limits and specifications;

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;

(32) Specifications for IFQs for limited access general category vessels;

(33) Revisions to the cost recovery program for IFQs;

(34) Development of general category fishing industry sectors and fishing cooperatives;

(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;

(36) VMS requirements;

(37) Increases or decreases in the LAGC possession limit;

(38) Adjustments to aspects of ACL management, including accountability measures;

(39) Adjusting EFH closed area management boundaries or other associated measures;

(40) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set-aside programs; and

(41) Any other management measures currently included in the FMP.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this section to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi^2 (6,993 km^2), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels;

(2) Fixed-gear location reporting and plotting requirements;

(3) Standards of operation when gear conflict occurs;

(4) Fixed-gear marking and setting practices;

(5) Gear restrictions for specific areas (including time and area closures);

(6) VMS;

(7) Restrictions on the maximum number of fishing vessels or amount of gear; and

(8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not affect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[76 FR 43766, July 21, 2011, as amended at 77 FR 20740, Apr. 6, 2012; 79 FR 34262, June 16, 2014; 80 FR 37194, June 30, 2015; 81 FR 76524, Nov. 3, 2016]

§ 648.56 Scallop research.

(a) At least biennially, in association with the biennial framework process, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in paragraph (d) of this section and § 648.59(e), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications must be received. The FFO shall be published as soon as possible by NMFS and shall provide the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for

RSA funding for the first year, second year, or both.

(b) Proposals submitted in response to the FFO must include the following information, as well as any other specific information required within the FFO: A project summary that includes the project goals and objectives, the relationship of the proposed research to scallop research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NOAA shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, or take additional trips into Open, Access Areas, or the NGOM management area. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas, available access areas, and the NGOM. The specific access areas that are open to RSA harvest and the amount of NGOM allocation to be landed through RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

(e) If all RSA TAC is not allocated in a fishing year, and proceeds from compensation fishing for approved projects fall short of funds needed to cover a project's budget due to a lower-than-expected scallop price, unused RSA allocation can be provided to that year's awarded projects to compensate for the funding shortfall, or to expand a project, rather than having that RSA go unused. NMFS shall identify the process for the reallocation of available RSA pounds as part of the FFO for the RSA program. The FFO shall specify the conditions under which a project that has been awarded RSA could be provided additional RSA pounds as supplemental compensation to account for lower-than-expected scallop price or for expansion of the project, timing of reallocation, and information submission requirements.

(f) If all RSA pounds awarded to a project cannot be harvested during the applicable fishing year, RSA TAC awarded to that project may be harvested through June 30 of the fishing year subsequent to the fishing year in which the set-aside is awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.60, and the restriction on fishing in only one access area during a trip specified in § 648.59(b)(4). The RSA project proposal must list which of these measures for which an exemption is required. An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

(h) Upon completion of scallop research projects approved pursuant to this section and the applicable NOAA grants review process, researchers must provide the Council and NMFS with a report of research findings, which must include at least the following: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical

audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

[76 FR 43769, July 21, 2011, as amended at 77 FR 20740, Apr. 6, 2012; 81 FR 76525, Nov. 3, 2016; 83 FR 12862, Mar. 26, 2018]

§§ 648.57–648.58 [Reserved]

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) The Sea Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (*i.e.*, when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, Habitat Management Areas specified in § 648.370, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

(1) When a Scallop Rotational Area is closed to scallop fishing, a vessel issued any scallop permit may not fish for, possess, or land scallops in or from the area unless the vessel is transiting pursuant to paragraph (a)(2) of this section. A vessel may fish for species other than scallops within the rotational closed areas, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. When a Scallop Rotational Area is open to scallop fishing (henceforth referred to as an Access Area), a scallop vessel may not fish for, possess, or land scallops in or from the area unless it is participating in, and complies with the requirements of, the Scallop Access Area Program Requirements defined in paragraphs (b) through (g) of this section or the vessel is transiting pursuant to paragraph (a)(3) of this section.

(2) *Transiting a Closed Scallop Rotational Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Area Access Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) A limited access scallop vessel may only fish in the Scallop Rotational Areas, defined in § 648.60, when the areas are open (*i.e.*, Access Areas), as specified through the specifications or framework adjustment processes defined in § 648.55, subject to any additional restrictions specified in § 648.60, provided the vessel complies with the requirements specified in paragraphs (b)(1) through (b)(9), and (c) through (f)

of this section. An LAGC scallop vessel may fish in the Scallop Rotational Areas, defined in § 648.60, when the areas are open (*i.e.*, Access Areas), as specified through the specifications or framework adjustment processes defined in § 648.55, subject to any additional requirements specified in § 648.60, provided the vessel complies with the requirements specified in paragraph (g) of this section.

(1) *VMS*. Each vessel participating in the Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraphs (b)(9) and (f) of this section.

(2) Vessels participating in the Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(f) and vessel notification requirements specified in § 648.11(g) for observer deployment.

(3) *Scallop Access Area Allocations*—(i) *Limited access vessel allocations and possession limits*. (A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in § 648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas during applicable seasons specified in § 648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (b)(3)(ii) of this section. A vessel may harvest its scallop allocation on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in § 648.55, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in § 648.60.

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2019 and 2020 fishing years:

(*1*) *Full-time vessels*—(*i*) For a full-time limited access vessel, the possession limit and allocations are:

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	18,000 lb (8,165 kg) per trip.	18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-West		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Mid-Atlantic		54,000 lb (24,494 kg)	18,000 lb (8,165 kg).
Total		126,000 lb (57,153 kg)	36,000 lb (16,329 kg).

*Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(*ii*) *Closed Area 1 Access Area flex allocations*. For the 2019 fishing year and the first 60 days of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(*2*) *Part-time vessels*— (*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

Rotational access area	Scallop possession limit	2019 Scallop allocation	2020 Scallop allocation (default)
Closed Area 1 Flex*	17,000 lb (7,711 kg) per trip	17,000 lb (7,711 kg)	0 lb (0 kg).
Nantucket Lightship West		17,000 lb (7,711 kg)	7,200 lb (32,66 kg).
Mid-Atlantic		17,000 lb (7,711 kg)	7,200 lb (3,266 kg).
Total		51,000 lb (23,133 kg).	14,400 lb (6,532 kg).

*Closed Area 1 flex allocation can be landed in any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30.

(*ii*) *Closed Area 1 Access Area flex allocations*. For the 2019 fishing year and the first 60 days of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its Closed Area 1 Access Area allocation from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. For example, a vessel could take a trip in the Closed Area 1 Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area 1 flex allocation available, which could be landed from any other available access area as described in this section, provided the 17,000-lb (7,711-kg) possession limit is not exceeded on any one trip.

(*3*) *Occasional limited access vessels*. (*i*) For the 2019 fishing year only, an occasional limited access vessel is allocated 10,500 lb (4,763 kg) of scallops with a trip possession limit at 10,500 lb of scallops per trip (4,763 kg per trip). Occasional limited access vessels may harvest the 10,500 lb (4,763 kg) allocation from only one available access area (Closed Area 1, Nantucket Lightship-West, or Mid-Atlantic).

(*ii*) For the 2020 fishing year, occasional limited access vessels are allocated 3,000 lb (1,361 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 3,000 lb of scallops per trip (1,361 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges*. (A) The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 18,000 lb (8,165 kg), a full-time vessel may exchange no more or less than 18,000 lb (8,165 kg), from one access area for no more or less than 18,000 lb (8,165 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B) *Flex allocation exchanges*. In fishing year 2019, full-time and part-time

vessel are respectively allocated 18,000 lb (8,165 kg) and 17,000 lb (7,711 kg) of scallops that may be landed from any access area made available in the 2019 fishing year pursuant to the area boundaries defined by Framework 30. This flex allocation may be exchanged in full for another access area allocation, but only the flex allocation may be landed from any access area. For example, if a Vessel A exchanges 18,000 lb (8,165 kg) of flex allocation for 18,000 lb (8,165 kg) of Mid-Atlantic Access Area allocation with Vessel B, Vessel A would no longer be allowed to land this allocation from the any available access area and may only land this allocation from Mid-Atlantic Access Area, but Vessel B could land the flex allocation in any available access area.

(4) *Area fished.* While on a Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Scallop Access Area more than once per trip. A vessel on a Scallop Access Area trip may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area as provided for under paragraph (a)(3) of this section.

(5) *NE multispecies possession limits*—(i) *Maximum possession limit of NE Multispecies combined.* A vessel owner or operator of a limited access scallop vessel issued a valid NE multispecies permit as specified in § 648.4(a)(1), that has declared into a Scallop Access Area and fishes within the open Scallop Rotational Area boundaries defined in § 648.60, may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (b)(5)(ii) through (iv) of this section.

(ii) *Atlantic cod.* Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(iii) *Haddock.* Such vessel may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (b)(5)(ii) of this section, except that such vessel are prohibited from possessing or landing haddock from January 1 through June 30.

(iv) *Yellowtail flounder.* Such vessel is prohibited from fishing for, possessing, or landing yellowtail flounder.

(6) *Gear restrictions.* (i) The minimum ring size for dredge gear used by a vessel fishing on a Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(ii) Vessels fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas defined in § 648.60 are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting.* While outside a Sea Scallop Access Area (*i.e.*, in open areas) on a Scallop Access Area trip, the vessel must have all fishing gear stowed and not available for immediate use as defined in § 648.2, unless there is a compelling safety reason to be transiting open areas without gear stowed. Regulations pertaining to transiting Scallop Rotational Areas are provided for under paragraph (a)(3) of this section.

(8) *Off-loading restrictions.* The vessel may not offload its catch from a Scallop Access Area trip at more than one location per trip.

(9) *Reporting.* The owner or operator must submit scallop catch reports through the VMS, as specified in § 648.10(f)(4)(i), and limited access scallop access area pre-landing notification forms, as specified in § 648.10(f)(4)(iii).

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop

Access Area is open, unless otherwise specified in this section. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2018, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2019 (April 1, 2019, through May 30, 2019).

(d) *Possession limit to defray the cost of observers*. The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in § 648.55 to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit. If a vessel does not land its additional allowance on the trip while carrying an observer, the additional allowance will be added to the vessel's IFQ allocation or the vessel's allocation for the Scallop Rotational Area that was fished. The vessel may land the remainder of its allowance on a subsequent trip. However, the vessel may not exceed the IFQ or Scallop Rotational Area trip possession limit, as described in § 648.52(a) or § 648.59(b), respectively, unless it is actively carrying an observer.

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas*. Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2019 and 2020 are:

(1) 2019: Nantucket Lightship-West and Mid-Atlantic.

(2) 2020: No access areas.

(f) *VMS polling*. For the duration of the Sea Scallop Area Access Program, as defined in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) *Limited Access General Category vessels*. (1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (b)(2), (b)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Limited Access General Category Gear restrictions*. An LAGC IFQ scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 that lay east of 72°30′ W. lat. must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in these areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on

board of, an LAGC scallop vessel fishing in the remaining Scallop Rotational Areas defined in § 648.60 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area trips*. (i) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (*i.e.*, there are no carryover trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in § 648.55.

(ii) Scallops landed by each LAGC IFQ vessel on an access area trip shall count against the vessel's IFQ.

(iii) Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the FEDERAL REGISTER, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the FEDERAL REGISTER.

(iv) *Allocation of Scallop Access Area Trips*. Unless otherwise specified by the Council through the framework adjustment or specifications process defined in § 648.55, the LAGC IFQ access area trip allocations, specified in paragraph (v) of this section, shall be set at 5.5 percent of the total expected access area harvest for each year.

(v) The following LAGC IFQ access area trip allocations will be effective for the 2019 and 2020 fishing years:

Scallop access area	2019	2020 [1]
Closed Area 1	571	0
Nantucket Lightship-West	1,713	571
Mid-Atlantic	1,713	571
Total	3,997	1,142

[1] The LAGC IFQ access area trip allocations for the 2020 fishing year are subject to change through a future specifications action or framework adjustment.

(4) *Possession limits*—(i)*Scallops*. (A) A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops.

(B) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 may possess scallops up to the possession limit specified in § 648.52(a), unless otherwise authorized pursuant to paragraph (d) of this section.

(ii) *Other species*. Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60, and the Nantucket Lightship North Sea Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

[81 FR 76525, Nov. 3, 2016, as amended at 82 FR 15162, Mar. 27, 2017; 83 FR 15263, Apr. 9, 2018; 83 FR 17309, Apr. 19, 2018; 84 FR 11443, Apr. 1, 2019]

§ 648.60 Sea Scallop Rotational Areas.

(a) *Mid-Atlantic Scallop Rotational Area*. (1) The Mid-Atlantic Scallop Rotational Area is comprised of the following scallop access areas: The Elephant Trunk Scallop Rotational Area, as defined in paragraph (a)(3) of this section; and the Hudson Canyon Scallop Rotational Area, as defined in paragraph (a)(4) of this section.

(2) [Reserved]

(3) *Elephant Trunk Scallop Rotational Area*. The Elephant Trunk Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude
ETAA1	38°50′	74°20′
ETAA2	38°10′	74°20′
ETAA3	38°10′	73°30′
ETAA4	38°50′	73°30′
ETAA1	38°50′	74°20′

(4) *Hudson Canyon Scallop Rotational Area*. The Hudson Canyon Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N	73°10′ W.
H2	39°30′ N	72°30′ W.
H3	38°30′ N	73°30′ W.
H4	38°50′ N	73°30′ W.
H5	38°50′ N	73°42′ W.
H1	39°30′ N	73°10′ W.

(b) [Reserved]

(c) *Closed Area I Scallop Rotational Area*. The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude
CAIA1	41°30′	68°30′
CAIA2	40°58′	68°30′
CAIA3	40°54.95′	68°53.37′
CAIA4	41°04′	69°01′
CAIA5	41°30′	69°23′
CAIA1	41°30′	68°30′

(d) *Closed Area II Scallop Rotational Area*. (1) The Closed Area II Scallop Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude	Note
CAIIA1	41°00′ N	67°20′ W.	
CAIIA2	41°00′ N	66°35.8′ W	
CAIIA3	41°18.45′ N	(1)	(2)
CAIIA4	41°30′ N	(3)	(2)
CAIIA5	41°30′ N	67°20′ W.	
CAIIA1	41°00′ N	67°20′ W.	

[1] The intersection of 41°18.45′ N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45′ N. lat. and 66°24.89′ W. long.

[2] From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada Maritime Boundary.

[3] The intersection of 41°30′ N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N. lat., 66°34.73′ W. long.

(2) *Season*. A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(e) *Nantucket Lightship South Scallop Rotational Area*. The Nantucket Lightship South Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude
NLSS1	40°20′	69°30′
NLSS2	40°33′	69°30′
NLSS3	40°33′	69°00′
NLSS4	40°20′	69°00′
NLSS1	40°20′	69°30′

(f) *Nantucket Lightship West Scallop Rotational Area*. The Nantucket Lightship West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude
NLSW1	40°20′	70°00′
NLSW2	40°43.44′	70°00′
NLSW3	40°43.44′	69°30′
NLSW4	40°20′	69°30′
NLSW5	40°20′	70°00′

(g) *Nantucket Lightship North Scallop Rotational Area*. The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSH2	40°50′	69°00′
NLSN3	40°33′	69°00′
NLSN4	40°33′	69°30′
NLSN1	40°50′	69°30′

(h) *Nantucket Lightship Hatchet Scallop Rotational Area*. The Nantucket Lightship Hatchet Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude
NLSH1	40°50′	69°30′
NLSH2	40°43.44′	69°30′
NLSH3	40°43.44′	70°
NLSH4	40°20′	70°
NLSH5	40°20′	70°20′
NLSH6	40°50′	70°20′
NLSH7	40°50′	69°30′

[81 FR 76528, Nov. 3, 2016, as amended at 82 FR 15163, Mar. 27, 2017; 83 FR 15263, Apr. 9, 2018; 83 FR 17311, Apr. 19, 2018]

§ 648.61 [Reserved]

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a) The NGOM scallop management area is the area north of 42°20' N. lat. and within the boundaries of the Gulf of Maine Scallop Dredge Exemption Area as specified in § 648.80(a)(11). To fish for or possess scallops in the NGOM scallop management area, a vessel must have been issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by vessels issued NGOM permits shall be deducted from the LAGC portion of the NGOM scallop total allowable catch when vessels fished all or part of a trip in the Federal waters portion of the NGOM. If a vessel with a NGOM scallop permit fishes exclusively in state waters within the NGOM, scallop landings from those trips will not be deducted from the Federal NGOM quota.

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the LAGC portion of the NGOM scallop total allowable catch specified in the specifications or framework adjustment processes defined in § 648.55. Scallop landings by LAGC IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(4) A vessel issued a NGOM or LAGC IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(5) Scallop landings by all vessels issued scallop permits and fishing in the NGOM under the scallop RSA program (as specified in § 648.56) shall be deducted from the limited access portion of the NGOM scallop total allowable catch.

(b) *Total allowable catch*. The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as defined in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL defined in § 648.53(a). The total allowable catch shall be divided between the limited access and the LAGC fleets.

(1) *NGOM annual hard TACs.* The LAGC and the limited access portions of the annual hard TAC for the NGOM 2019 and 2020 fishing years are as follows:

Fleet	2019		2020 (default)	
	lb	kg	lb	kg
LAGC	137,500	62,369	120,000	54,431
Limited access	67,500	30,617	50,000	22,680
Total	205,000	92,986	170,000	77,111

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued an LAGC or limited access scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the FEDERAL REGISTER that the vessel's respective portion(s) of the NGOM scallop total allowable catch in accordance with paragraph (b)(1) of this section has been reached, unless the vessel is participating in the scallop RSA program as specified in § 648.56, has been allocated NGOM RSA pounds, and the limited access portion of the NGOM TAC has not been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM, unless participating in the state waters exemption program as specified in § 648.54. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(3) If either the LAGC or the limited access portion of the annual NGOM TAC is exceeded, the amount of NGOM scallop landings in excess of the portion of the TAC specified in paragraph (b)(1) of this section shall be deducted from the respective portion(s) of the NGOM TAC which has been exceeded for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM management area is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a NGOM trip under the scallop RSA program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM or IFQ permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a NGOM trip under the scallop RSA program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

[73 FR 20131, Apr. 14, 2008, as amended at 75 FR 36576, June 28, 2010; 76 FR 43770, 43797, July 21, 2011; 77 FR 20741, Apr. 6, 2012; 78 FR 27108, May 9, 2013; 79 FR 52580, Sept. 4, 2014; 81 FR 26786, May 4, 2016; 81 FR 76529, Nov. 3, 2016; 82 FR 15163, Mar. 27, 2017; 83 FR 12862, Mar. 26, 2018; 84 FR 11445, Apr. 1, 2019]

§ 648.63 General category Sectors and harvesting cooperatives.

(a) *Procedure for implementing Sector allocation proposals.* (1) Any person may submit a Sector allocation proposal for a group of LAGC scallop vessels to the Council, at least 1 year in advance of

the start of the proposed sector, and request that the Sector be implemented through a framework procedure specified at § 648.55, in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation be initiated, the Council shall follow the framework adjustment provisions of § 648.55. Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector remain subject to the LAGC scallop vessel regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (c) of this section, and comply with the conditions and restrictions of this paragraph (b).

(1) *Participation.* (i) Only LAGC scallop vessels are eligible to form Sectors, and Sectors may choose which eligible permit holders to include or exclude in the sector, consistent with all applicable law. A Sector may establish additional criteria for determining its membership, provided such criteria are specified in the Sector's operations plan and are consistent with all applicable law. Any interested group that meets the eligibility criteria may submit a proposal for a Sector. To initiate the process of Sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that Sector's allocation of total allowable catch. Vessels that do not choose to participate in a sector will fish under the IFQ program and remain in the non-sector scallop fishery.

(ii) Participation by incidental catch or NGOM scallop vessels in the Sector is subject to approval by the Council as part of the action that implements the Sector allocation, provided the details of such participation are specified in the Sector's operations plan. A Sector allocation may be harvested by non-Sector members, provided the Sector operations plan specifies that the Sector may authorize non-Sector vessels to harvest the Sector allocation. In this case, if the Sector is approved, the landings history of the participating non-Sector vessels may not be used in the calculation of future Sector shares and may not be used as scallop catch history for such vessels. The operations plan must specify how such participating non-Sector shall be subject to the rules of the Sector.

(iii) Once a vessel operator and/or vessel owner signs a binding contract to have his/her vessel participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(iv) Vessels that fish in the LAGC scallop fishery outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for IFQ used, or catch by the vessel, prior to implementation of the Sector.

(v) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(iii) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(vi) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the scallop regulations for non-Sector vessels specified under this part either for any period specified in the final decision of penalty or sanction.

(vii) If a pre-existing Sector accepts a new member, the percentage share brought to the Sector is based on that vessel's average qualification landings at the time it joins the Sector (*i.e.*, the vessel is treated as a ''Sector of one'' and a share based on the appropriate adjusted TACs is calculated). This new single-vessel-Sector share is added to the existing Sector. If a vessel leaves a Sector, that Sector's share is reduced

by the individual vessel share the exiting vessel had when it joined the Sector.

(viii) A vessel may not be a member of more than one Sector. Once a vessel enters into a Sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one Sector to another during a single fishing year. Therefore, if a vessel leaves a Sector for any reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year

(2) *Allocation of TAC to Sectors*. (i) The sector allocation shall be equal to a percentage share of the ACL allocation for IFQ scallop vessels specified in § 648.53(a), similar to an IFQ scallop vessel's IFQ as specified in § 648.53(h). The sector's percentage share of the IFQ scallop fishery ACL catch shall not change, but the amount of allocation based on the percentage share will change based on the ACL specified in § 648.53(a).

(ii) *Sector share determination*. When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(2)(iii) for each vessel listed as a Sector member. The Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels defined in § 648.53(a)(4).

(3) Once a Sector's allocation is projected to be harvested, Sector operations will be terminated for the remainder of the fishing year.

(4) If a Sector's allocation is exceeded in a given fishing year, the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanction pursuant to 15 CFR part 904. If a Sector exceeds its allocation in more than one fishing year, the Sector's authorization to operate may be withdrawn.

(5) A vessel operator and/or vessel owner participating in a Sector is not subject to the limit on the vessel's catch based on the vessel's own IFQ or contribution percentage as defined in § 648.53(h)(2)(iii), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to participate in the Sector and exempts the vessel from its IFQ limit and any other related measures. The Sector shall determine how the Sector's allocation will be divided between its participating vessels, regardless of whether the catch by a participating vessel exceeds that vessel's own IFQ.

(6) Each vessel operator and/or vessel owner fishing under an approved Sector must comply with all scallop management measures of this part and other applicable law, unless exempted under a Letter of Authorization, as specified in paragraph (b)(11) of this section. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operations Plan specified in paragraph (c) of this section and the Letter of Authorization issued pursuant to paragraph (b)(11) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(7) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(8) It shall be the responsibility of each Sector to track its activity and internally enforce any provisions adopted through procedures established in the operations plan and agreed to through the Sector contract. Sector contracts should describe graduated sanctions, including grounds for expulsion of Sector member vessels. The Sector and participating Sector vessels shall be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors and other regulations under 50 CFR part 648. Vessels operating within a Sector are responsible for judgments against the Sector. Sector operations plans shall specify how a

Sector will monitor its landings to assure that Sector landings do not exceed the Sector allocation. At the end of the fishing year, NMFS shall evaluate landings using VMS and any other available information to determine whether a Sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a Sector exceeds its TAC, the Sector may have its authorization as a Sector withdrawn by the Regional Administrator, after consultation with the Council, and may be subject to enforcement action.

(9) Permanent or temporary transfers of allocation between Sectors or between Sector and non-Sector participants is prohibited. For purposes of harvesting a Sector allocation only, vessels under contract to a Sector are assumed to be part of that Sector for the duration of that contract.

(10) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(11) If a Sector is approved as specified in paragraph (d)(3) of this section, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner for the participating Sector vessel. The Letter of Authorization shall authorize participation in the Sector operations and may exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ and related measures. The Letter of Authorization may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the Sector's operations plan and the Sector's allocation.

(c) *Operations plans.* (1) A group that wants to form a Sector and receive an allocation must submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the Sector and, if approved, shall constitute a contract.

(2) The operations plan among all of the Sector members must have, at a minimum, the following components:

(i) A list of all participants;

(ii) A contract signed by all participants indicating their agreement to abide by the operations plan;

(iii) An entity name, address, phone number, and the name and contact information for a Sector representative (a manager or director) that NMFS can contact regarding Sector management issues;

(iv) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;

(v) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);

(vi) A plan detailing how the Sector will avoid exceeding its allocated TACs, including provisions for monitoring and enforcement of the Sector regulations, and documenting all landings and discards;

(vii) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;

(viii) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

(ix) The process through which the operations plan can be amended by Sector members;

(x) If the Sector plans to authorize non-Sector vessels to harvest scallops allocated to the Sector, details of such arrangements must be described in the operations plan;

(xi) Any documents and analyses necessary to comply with the National Environmental Protection Act must be submitted to NMFS. The development of the analytical document is the responsibility of the applicants.

(xii) Any other information determined to be necessary and appropriate.

(d) *Sector review, approval, and revocation.* (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The Council shall consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After Council approval of a Sector, the details of its operation

shall be addressed between the Sector and NMFS, although the New England Fishery Management Council may review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Administrator no later than July 1 of each year, whether or not the plan has changed. Once the submission documents specified under paragraphs (a)(1) and (c)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

[73 FR 20131, Apr. 14, 2008, as amended at 77 FR 20741, Apr. 6, 2012; 81 FR 76530, Nov. 3, 2016]

§ 648.64 Flounder Stock sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder and the northern and southern stocks of windowpane flounder. The sub-ACLs for the yellowtail flounder stocks and the windowpane flounder stocks are specified in § 648.90(a)(4)(iii)(C) and (E) of the NE multispecies regulations, respectively.

(b) *Accountability Measure Areas*—(1) *Georges Bank Accountability Measure Area*. The Georges Bank Accountability Measure Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	N latitude	W longitude	Note
GBAM1 ..	41°30′	67°20′	
GBAM2 ..	41°30′	(1)	(2)
GBAM3 ..	40°30′	(3)	(2)
GBAM4 ..	40°30′	67°20′	
GBAM1 ..	41°30′	67°20′	

[1] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.

[2] From Point GBAM2 connected to Point GBAM3 along the U.S.-Canada Maritime Boundary.

[3] The intersection of 40°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately, 65°44.34′ W long.

(2) *Mid-Atlantic Accountability Measure Area*. The Mid-Atlantic Accountability Measure Areas is defined as the area west of 71° W Long., outside of the Sea Scallop Access Areas.

(c) *Gear restriction*. When subject to an accountability measure gear restricted area as described in paragraphs (d) through (g) of this section, a vessel must fish with scallop dredge gear that conforms to the following restrictions:

(1) No more than 5 rows of rings shall be used in the apron of the dredge. The apron is on the top side of the dredge, extends the full width of the dredge, and is the rows of dredge rings that extend from the back edge of the twine top (*i.e.*, farthest from the dredge frame) to the clubstick; and

(2) The maximum hanging ratio for a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear does not exceed 1.5 meshes per 1 ring overall. This means that the twine top is attached to the rings in a pattern of alternating 2 meshes per ring and 1 mesh per ring (counted at the bottom where the twine top connects to the apron), for an overall average of 1.5 meshes per ring for the entire width of the twine top. For example, an apron that is 40 rings wide subtracting 5 rings one each side of the side pieces, yielding 30 rings, would only be able to use a twine top with 45 or fewer meshes so that the overall ratio of meshes to rings did not exceed 1.5 (45 meshes/30 rings = 1.5).

(3) Vessels may not fish for scallops with trawl gear when the gear restricted area accountability measure is in effect.

(d) *Georges Bank Yellowtail Flounder Accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Georges Bank Accountability Measure Area, described in paragraph (b)(1) of this section, shall be considered the Georges Bank Yellowtail Flounder Gear Restricted Area. Scallop vessels fishing in that area for the period of time specified in paragraph (d)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section.

(2) *Duration of gear restricted area.* The Georges Bank Yellowtail Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of gear restriction
20 or less	November 15 through December 31.
Greater than 20	April through March (year round).

(e) *SNE/MA yellowtail flounder accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the SNE/MA yellowtail flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Mid-Atlantic Accountability Measure Area, described in paragraph (b)(2) of this section, shall be considered the SNE/MA Yellowtail Flounder Gear Restricted Area. Scallop vessels participating in the DAS, or LAGC IFQ scallop fishery for the period of time specified in paragraph (e)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section when fishing in open areas. This accountability measure does not apply to scallop vessels fishing in Sea Scallop Access Areas.

(2) *Duration of gear restricted area.* The SNE/MA Yellowtail Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the SNE/MA yellowtail flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of gear restriction
20 or less	April.
Greater than 20	April through May.

(f) *Northern windowpane flounder accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Northern windowpane flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Georges Bank Accountability Measure Area, described in (b)(1) of this section, shall be considered the Northern Windowpane Flounder Gear Restricted Area. Scallop vessels fishing in that area for the period of time specified in paragraph (f)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section.

(2) *Duration of gear restricted area.* The Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of gear restriction
20 or less	November 15 through December 31.
Greater than 20	April through March (year round).

(g) *Southern windowpane accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the southern windowpane flounder sub-ACL for the scallop fishery is exceeded and an accountability measure is triggered as described in § 648.90(a)(5)(iv), the Mid-Atlantic Accountability Measure Area, described in paragraph (b)(2) of this section, shall be considered the Southern Windowpane Flounder Gear Restricted Area. Scallop vessels participating in the DAS, or LAGC IFQ scallop fishery for the period of time specified in paragraph (g)(2) of this section must comply with the gear restrictions specified in paragraph (c) of this section when fishing in open areas. This accountability measure does not apply

to scallop vessels fishing in Sea Scallop Access Areas.

(2) *Duration of gear restricted area.* The SNE/MA Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the SNE/MA windowpane flounder sub-ACL, as follows:

Percent overage of sub-ACL	Duration of gear restriction
20 or less	February.
Greater than 20	March and February.

(h) *Process for implementing the AM*—(1) *If there is reliable information to make a mid-year determination,* that a flounder stock sub-ACL was exceeded, or is projected to be exceeded, the Regional Administrator shall determine, on or about January 15 of each year whether an accountability measure should be triggered as described in § 648.90(a)(5)(iv). The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the specific flounder stock. Based on this determination, the Regional Administrator shall implement the AM in the following fishing year in accordance with the APA and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the catch, overage, and projection that resulted in the gear restricted area.

(2) *If reliable information is not available to make a mid-year determination,* after the end of the scallop fishing year the Regional Administrator shall determine whether the flounder stock sub-ACL was exceeded and if an accountability measure was triggered as described in § 648.90(a)(5)(iv). The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the specific flounder stock. Based on this determination, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (*e.g.*, an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the flounder stock catch and overage information.

[83 FR 17311, Apr. 19, 2018]

§ 648.65 [Reserved]

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be equal to the ABCs recommended by the SSC.

(1) *Sectors.* The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guidelines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity.* The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of the fishery performance relative to the ACLs at least every 5 years.

(1) If the surfclam or the ocean quahog ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the MAFMC staff will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that

occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60622, Sept. 29, 2011]

§ 648.71 Surfclam and ocean quahog Annual Catch Targets (ACT).

(a) The MAFMC staff shall identify and review the relevant sources of management uncertainty to recommend ACTs to the MAFMC as part of the surfclam and ocean quahog specification process. The MAFMC staff recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. The surfclam ACT and the sum of the Maine and non-Maine ocean quahog ACTs shall be less than or equal to the ACL for the corresponding stock. The MAFMC staff shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The MAFMC staff shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.70(b)(1) through (3).

[76 FR 60622, Sept. 29, 2011]

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas*. The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports*. On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the quotas.

(ii) Fishing mortality rates relative to the quotas.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review*. Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the FEDERAL REGISTER. The Regional Administrator shall consider public comments received, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act or the objectives of the Atlantic Surfclam and Ocean Quahog FMP or other applicable law.

(b) *Interim quota modifications*. Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of up to 3 years, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for up to a 3-year period.

(c) *Annual quotas*. The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. At the end of a multiyear quota period, NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

[76 FR 60622, Sept. 29, 2011, as amended at 81 FR 38972, June 15, 2016]

§ 648.73 Surfclam and ocean quahog Accountability Measures.

(a) *Commercial ITQ fishery*. (1) If the ACL for surfclam or ocean quahog is exceeded, and the overage can be attributed to one or more ITQ allocation holders, the full amount of the overage will be deducted from the appropriate ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be deducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery*. If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, than the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

[76 FR 60623, Sept. 29, 2011]

§ 648.74 Individual Transferable Quota (ITQ) Program.

(a) *Annual individual allocations*. Each fishing year, the Regional Administrator shall determine the initial annual allocation of surfclams and ocean quahogs for the next fishing year for each ITQ permit holder holding ITQ quota share pursuant to the requirements of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the quota share percentage held by each ITQ permit holder as of the last day of the previous fishing year in which quota shareholders are permitted to permanently transfer quota share percentage pursuant to paragraph (b) of this section (*i.e.*, October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of annual allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of annual allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of annual allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that annual allocations are specified in whole cages.

(1) *Surfclam and ocean quahog ITQ permits*. Surfclam and ocean quahog ITQ allocations shall be issued in the form of annual ITQ permits. The ITQ permit shall specify the quota share percentage held by the ITQ permit holder and the annual allocation in cages and cage tags for each species.

(i) *Eligibility*. In order to be eligible to hold a surfclam or ocean quahog ITQ permit, an individual must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(ii) *Application*—(A) *General*. Applicants for a surfclam or ocean quahog ITQ permit under this section must submit a completed ITQ permit application and a completed ITQ ownership form on the appropriate forms obtained from NMFS. The ITQ permit application and ITQ ownership form must be filled out completely and signed by the applicant. The Regional Administrator

will notify the applicant of any deficiency in the application.

(B) *Renewal applications.* Applications to renew a surfclam or ocean quahog ITQ permit must be received by November 1 to be processed in time for permits to be issued by December 15, as specified in paragraph (a)(1)(iii) of this section. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An ITQ permit holder must renew his/her ITQ permit(s) on an annual basis by submitting an application and an ownership form for such permit prior to the end of the fishing year for which the permit is required. Failure to renew a surfclam or ocean quahog ITQ permit in any fishing year will result in any surfclam or ocean quahog ITQ quota share held by that ITQ permit holder to be considered abandoned and relinquished as specified in paragraph (a)(1)(ix) of this section.

(C) *Lenders Holding ITQ Quota Share as Collateral.* A bank or other lender that holds ITQ quota share as collateral on a loan may be allowed to provide less detailed information on the ITQ ownership form under the following conditions.

(*1*) The lender certifies that the ITQ quota share is held solely as collateral on a loan and the lender does not exert any control over the use of the annual allocation of cage tags.

(*2*) The lender identifies the borrower, and the borrower maintains a valid ITQ permit including all required ownership information.

(*3*) The lender may only transfer quota share or cage tags to the identified borrower. The borrower could then transfer the quota share or cage tags to another party, if desired.

(iii) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by November 1, as specified in paragraph (a)(1)(ii)(B) of this section, NMFS shall issue annual ITQ permits on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(iv) *Duration.* An ITQ permit is valid through December 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the ITQ quota share or cage tag allocation under paragraph (b) of this section.

(v) *Alteration.* An ITQ permit that is altered, erased, or mutilated is invalid.

(vi) *Replacement.* The Regional Administrator may issue a replacement permit upon written application of the annual ITQ permit holder.

(vii) *Transfer.* The annual ITQ permit is valid only for the person to whom it is issued. All or part of the ITQ quota share or the cage tag allocation specified in the ITQ permit may be transferred in accordance with paragraph (b) of this section.

(viii) *Fee.* The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(ix) *Abandonment or voluntary relinquishment.* Any ITQ permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to renew in accordance with paragraph (a)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year, except as specified in paragraph (a)(1)(x) of this section.

(x) *Transitional grace period.* A surfclam or ocean quahog quota share holder who does not submit a complete application for an ITQ permit before the end of the 2016 fishing year, may be granted a grace period of up to one year to complete the initial application process, and be issued an ITQ permit, before the quota share is considered permanently relinquished. If an individual is issued a 2016 ITQ permit, but fails to renew that ITQ permit before the end of the 2017 fishing year, the Regional Administrator may allow a grace period until no later than July 1, 2018, to complete the renewal process and retain the permit. A permit holder may not be issued cage tags or transfer quota share until a valid ITQ permit is issued. Failure to complete the ITQ permit application or renewal process, and be issued a valid ITQ permit before

the end of such a grace period would result in the ITQ permit and any associated ITQ quota share being permanently forfeit.

(2) [Reserved]

(b) *Transfers*—(1) *Quota share percentage*. Subject to the approval of the Regional Administrator, part or all of a quota share percentage may be transferred in the year in which the transfer is made, to any person or entity with a valid ITQ permit under paragraph (a) of this section. Approval of a transfer by the Regional Administrator and for a new ITQ permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new ITQ permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer form supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised ITQ permit from the Regional Administrator reflecting the new quota share percentage. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags*. Cage tags issued pursuant to § 648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Denial of ITQ transfer application*. The Regional Administrator may reject an application to transfer surfclam or ocean quahog ITQ quota share or cage tags for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid surfclam or ocean quahog ITQ permit for the appropriate species; the transfer is not allowed under paragraph (a)(1)(ii)(C)(*3*) of this section; the transferor's or transferee's surfclam or ocean quahog ITQ permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer ITQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(c) *ITQ cost recovery*—(1) *General*. The cost recovery program collects fees of up to three percent of the ex-vessel value of surfclams or ocean quahogs harvested under the ITQ program in accordance with the Magnuson-Stevens Act. NMFS collects these fees to recover the actual costs directly related to the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program.

(2) *Fee responsibility*. If you are an ITQ permit holder who holds ITQ quota share and receives an annual allocation pursuant to paragraph (a) of this section, you shall incur a cost recovery fee, based on all landings of surfclams or ocean quahogs authorized under your initial annual allocation of cage tags. You are responsible for paying the fee assessed by NMFS, even if the landings are made by another ITQ permit holder (*i.e.*, if you transfer cage tags to another individual who subsequently uses those tags to land clams). If you permanently transfer your quota share, you are still responsible for any fee that results from your initial annual allocation of cage tags even if the landings are made after the quota share is permanently transferred.

(3) *Fee basis*. NMFS will establish the fee percentages and corresponding per-tag fees for both the surfclam and ocean quahog ITQ fisheries each year. The fee percentages cannot exceed three percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ fisheries pursuant to section 304(d)(2)(B) of the Magnuson-Stevens Act.

(i) *Calculating fee percentage*. In the first quarter of each calendar year, NMFS will calculate the fee percentages for both the surfclam and ocean quahog ITQ fisheries based on information from the previous year. NMFS will use the following equation to annually determine the fee percentages: Fee percentage = the lower of 3 percent or $(DPC/V) \times 100$, where:

(A) ''DPC,'' or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of the ITQ program. ''Actual incremental costs'' mean those costs that would not have been incurred but for the existence of the ITQ program. If the amount of fees collected by NMFS is greater or lesser than the actual incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(B) ''V'' is the total ex-vessel value from the previous calendar year attributable to the ITQ fishery.

(ii) *Calculating per-tag fee.* To facilitate fee collection, NMFS will convert the annual fee percentages into per-tag fees for both the surfclam and ocean quahog ITQ fisheries. NMFS will use the following equation to determine each per-tag fee: Per-Tag Fee = (Fee Percentage × V)/T, where:

(A) ''T'' is the number of cage tags used, pursuant to § 648.77, to land shellfish in the ITQ fishery in the previous calendar year.

(B) ''Fee percentage'' and ''V'' are defined in paragraph (c)(3)(i) of this section.

(C) The per-tag fee is rounded down so that it is expressed in whole cents.

(iii) *Publication.* During the first quarter of each calendar year, NMFS will announce the fee percentage and per-tag fee for the surfclam and ocean quahog ITQ fisheries, and publish this information on the Regional Office Web site (*www.greateratlantic.fisheries.noaa.gov*).

(4) *Calculating individual fees.* If you are responsible for a cost recovery fee under paragraph (c)(2) of this section, the fee amount is the number of ITQ cage tags you were initially allocated at the start of the fishing year that were subsequently used to land shellfish multiplied by the relevant per-tag fee, as described in paragraph (c)(3)(ii) of this section. If no tags from your initial allocation are used to land clams you will not incur a fee.

(5) *Fee payment and collection.* NMFS will send you a bill each year for any applicable ITQ cost recovery fee.

(i) *Payment due date.* You must submit payment within 30 days of the date of the bill.

(ii) *Payment method.* You may pay your bill electronically using a credit card or direct Automated Clearing House withdrawal from a designated checking account through the Federal web portal, *www.pay.gov*, or another internet site designated by the Regional Administrator. Instructions for electronic payment will be included with your bill and are available on the payment Web site. Alternatively, payment by check may be authorized by the Regional Administrator if he/she determines that electronic payment is not practicable.

(6) *Payment compliance.* If you do not submit full payment by the due date, NMFS will notify you in writing via an initial administrative determination (IAD) letter.

(i) *IAD.* In the IAD, NMFS will:

(A) Describe the past-due fee;

(B) Describe any applicable interest charges that may apply;

(C) Provide you 30 days to either pay the specified amount or submit an appeal; and

(D) Include instructions for submitting an appeal.

(ii) *Appeals.* If you wish to appeal the IAD, your appeal must:

(A) Be in writing;

(B) Allege credible facts or circumstances;

(C) Include any relevant information or documentation to support your appeal; and

(D) Be received by NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of the business on the next business day. Your appeal must be mailed or hand delivered to the address specified in the IAD.

(iii) *Final decision*—(A) *Final decision on your appeal.* If you appeal an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on your appeal to the Regional Administrator, which shall be

advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on your appeal which is the final decision of the Department of Commerce.

(B) *Final decision if you do not appeal.* If you do not appeal the IAD within 30 calendar days, NMFS will notify you via a final decision letter. The final decision will be from the Regional Administrator and is the final decision of the Department of Commerce.

(C) *If the final decision determines that you are out of compliance.* (*1*) The Regional Administrator may, at any time thereafter, disapprove any application to transfer quota share or cage tags under § 648.74(b), and prohibit issuance of the surfclam or ocean quahog ITQ permit for subsequent years, until the outstanding balance is paid in full.

(*2*) The final decision will require full payment within 30 calendar days.

(*3*) If full payment is not received within 30 calendar days of issuance of the final decision, NMFS may refer the matter to the appropriate authorities for the purposes of collection or enforcement.

(7) *Annual report.* NMFS will publish annually a report on the status of the ITQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program, and other relevant information at the discretion of the Regional Administrator.

[80 FR 42751, July 20, 2015, as amended at 81 FR 38973, June 15, 2016

§ 648.75 Shucking at sea and minimum surfclam size.

(a) *Shucking at sea*—(1) *Observers.* (i) The Regional Administrator may allow the shucking of surfclams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surfclams and ocean quahogs harvested in the shell prior to shucking.

(ii) Any vessel owner may apply in writing to the Regional Administrator to shuck surfclams or ocean quahogs at sea. The application shall specify: Name and address of the applicant; permit number of the vessel; method of calculating the amount of surfclams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip.

(iii) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(iv) Any observer shall certify at the end of each trip the amount of surfclams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(2) *Conversion factor.* (i) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surfclams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surfclams or ocean quahogs harvested in the shell.

(ii) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor, together with the data used in its calculation, for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(iii) If the Regional Administrator makes the determination specified in paragraph (a)(2)(i) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(b) *Minimum surfclam size*—(1) *Minimum length.* The minimum length for surfclams is 4.75 inches (12.065 cm).

(2) *Determination of compliance.* No more than 50 surfclams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surfclams in any inspected cage of surfclams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same

vessel from the same trip are deemed to be in violation of the minimum size restriction.

(3) *Suspension*. Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual surfclams has been reduced because of density dependent factors.

(4) *Measurement*. Length is measured at the longest dimension of the surfclam shell.

[76 FR 60623, Sept. 29, 2011, as amended at 81 FR 38974, June 15, 2016]

§ 648.76 Closed areas.

(a) *Areas closed because of environmental degradation*. Certain areas are closed to all surfclam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Regional Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Regional Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Regional Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground*. The waste disposal site known as the ''Boston Foul Ground'' and located at 42°25′36″ N. lat., 70°35′00″ W. long., with a radius of 1 nm (1.852 km) in every direction from that point.

(2) *New York Bight*. The polluted area and waste disposal site known as the ''New York Bight'' and located at 40°25′04″ N. lat., 73°42′38″ W. long., and with a radius of 6 nm (9.66 km) in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31′00″ N. lat., 73°43′38″ W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19′48″ N. lat., 73°45′42″ W. long., to a point at the limit of the state territorial waters of New Jersey at 40°14′00″ N. lat., 73°55′42″ W. long.

(3) *106 Dumpsite*. The toxic industrial site known as the ''106 Dumpsite'' and located between 38°40′00″ and 39°00′00″ N. lat., and between 72°00′00″ and 72°30′00″ W. long.

(4) *Georges Bank*. The paralytic shellfish poisoning (PSP) contaminated area, which is located on Georges Bank, and is located east of 69° W. long., and south of 42°20′ N. lat. is closed to the harvest of surfclams and ocean quahogs. A portion of the Georges Bank Closed Area is open to harvest surfclams and ocean quahogs provided the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The open portion of the Georges Bank Closed Area is defined by straight lines connecting the following points in the order stated:

OPEN PORTION OF THE GEORGES BANK CLOSED AREA

Point	N. Latitude	W. Longitude
1	42°00′	68°50′
2	42°00′	67°20′
3	41°00′	67°20′
4	41°00′	67°10′
5	40°40′	67°10′
6	40°40′	68°30′
7	41°30′	68°30′
8	41°30′	68°50′
1	42°00′	68°50′

(i) *Requirements for Vessels Fishing in the Open Portion of the Georges Bank Closed Area*. A vessel may fish in the open portion of the Georges Bank Closed Area as specified in this paragraph (a)(4), provided it complies with the following terms and conditions:

(A) A valid letter of authorization issued by the Regional Administrator must be onboard the vessel; and

(B) The vessel must adhere to the terms and conditions of the PSP testing protocol as adopted into the National Shellfish Sanitation Program by the Interstate Shellfish Sanitation Conference. All surfclams and ocean quahogs harvested from the area must be handled in accordance with the terms and conditions of the protocol from the first point of harvest through completion of testing and release by

the State Shellfish Control Authority as required by the PSP testing protocol; and

(C) Prior to leaving port at the start of a fishing trip, the vessel's owner or operator must declare its intent to fish in the area through the vessel's vessel monitoring system.

(ii) [Reserved]

(b) *Areas closed because of small surfclams*. Areas may be closed because they contain small surfclams.

(1) *Closure*. The Regional Administrator may close an area to surfclams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surfclams of which:

(i) Sixty percent or more are smaller than 4.5 inches (11.43 cm); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening*. The Regional Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-length class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surfclams in the area.

(c) *Procedure*. (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Regional Administrator shall publish notification in the FEDERAL REGISTER of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening must be submitted to the Regional Administrator within 30 days after publication. The Regional Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the FEDERAL REGISTER. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surfclam and ocean quahog processor and to each surfclam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the FEDERAL REGISTER, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone*. The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for PSP. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources.

(2) [Reserved]

[76 FR 60624, Sept. 29, 2011, as amended at 77 FR 75063, Dec. 19, 2012; 81 FR 38974, June 15, 2016]

§ 648.77 Cage identification.

Except as provided in § 648.78, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surfclams and ocean quahogs:

(a) *Tagging*. Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under provisions of paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag

is required for every 60 ft^3 (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

(b) *Issuance*. The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.74 prior to the beginning of each fishing year, or he/she may specify, in the FEDERAL REGISTER, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.74(a). Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration*. Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return*. Tags that have been rendered null and void must be returned to the Regional Administrator, if possible.

(e) *Loss*. Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Administrator by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement*. Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Administrator or a vendor with a written authorization from the Regional Administrator.

(g) *Transfer*. See § 648.74(b)(2).

(h) *Presumptions*. Surfclams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under the provisions of § 648.77(b) or transferred under the provisions of § 648.74(b).

[76 FR 60625, Sept. 29, 2011]

§ 648.78 Maine mahogany quahog zone.

(a) *Landing requirements*. (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.74 and 648.77. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally permitted dealers for inspection by NMFS.

(b) *ACT monitoring and closures*—(1) *Catch quota*. (i) The ACT for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bu (35,239 hL). The ACL may be revised annually within the range of 17,000 and 100,000 Maine bu (5,991 and 35,239 hL) following the procedures set forth in §§ 648.72 and 648.73, if applicable.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.74 shall be applied against the Maine mahogany quahog ACT, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.74 will be

counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the ACT based on dealer reports and other available information, and shall determine the date when the ACT will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested, and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel*. The MAFMC shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surfclam and Ocean Quahog Committee of the MAFMC, regarding revisions to the annual quota and other management measures.

[76 FR 60625, Sept. 29, 2011]

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) *Within season management action*. The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Surfclam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process*. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action*. If the MAFMC's recommendation includes adjustments or additions to management measures and after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph

(a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[76 FR 60625, Sept. 29, 2011, as amended at 76 FR 81848, Dec. 29, 2011; 80 FR 37194, June 30, 2015; 81 FR 38974, June 15, 2016]

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area*. The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area*. The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

GB REGULATED MESH AREA

Point	N. latitude	W. longitude
CII3	42°22′	67°20′ [1]
SNE1	40°24′	65°43′ [2]

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	(2)	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraphs (a)(3)(i) and (vi) of this section and § 648.85(b)(6), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, on a vessel or used by

a vessel fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtains an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing in the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets,

each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(*3*) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags*. Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags*. Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(*1*) *Lost tags*. Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(*2*) *Replacement tags*. Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be reissued.

(v) *Hook gear restrictions*. Unless otherwise specified in this paragraph (a)(3)(v) or § 648.87(c), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS or on a sector trip, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel during the fishing trip is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited during the fishing trip. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS or on a sector trip in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit, and persons on such vessels, are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions*. A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18) through (a)(19), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/

Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed and not available for immediate use as defined in § 648.2.

(vii) *Rockhopper and roller gear restrictions*. For all trawl vessels fishing on a NE multispecies DAS or sector trip in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. Latitude	W. Longitude
1	42°00′	(1)
2	42°00′	(2)
3	42°00′	(3)
4	42°00′	69°50′
5	43°00′	69°50′
6	43°00′	70°00′
7	43°30′	70°00′
8	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraph (a)(3)(vi) of this section, this paragraph (a)(4)(i), § 648.85(b)(6) and (8), and § 648.87(c)(2)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraphs (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine*. Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels*. When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-

inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(*2*) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, may stow additional nets not to exceed 150, counting the deployed net. Such vessels may stow additional nets in accordance with the definition of not available for immediate use as defined in § 648.2 not to exceed 150 nets, counting the deployed net.

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(*4*) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi)–(viii) [Reserved]

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Atlantic herring, up to the amount specified in § 648.204; longhorn sculpin; squid, butterfish, and Atlantic mackerel, up to the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; red hake, up to the amount specified in § 648.86(d), monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tailweight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in

§ 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the FEDERAL REGISTER.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed and not available for immediate use as defined in § 648.2, unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section. For example, a vessel may fish in both the Cultivator Shoal Whiting Fishery Exemption Area and the Southern New England or Mid-Atlantic Exemption Areas, and would be restricted to a minimum mesh size of 3 in (7.62 cm) and a maximum trip limit of 30,000 lb (13,607.77 kg) for silver hake and offshore hake, combined, as required in the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Sea sampling*. The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review*. The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting*. (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use as defined in § 648.2. Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use as defined in § 648.2.

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Areas defined in paragraphs (a)(11) and (18) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed and not available for immediate use as defined in § 648.2, and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on

board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed and not available for immediate use as defined in § 648.2.

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no incidental catch of regulated multispecies*. An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i) of this section, and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. The Regional Administrator may modify or delete an existing exemption if he/she determines that the catch of regulated species is equal to or greater than 5 percent, by weight of total catch, or another pertinent approved amount, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications will be made through issuance of a rule in the FEDERAL REGISTER.

(ii) *Exemption allowing incidental catch of regulated species*. An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to

determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery.

(iv) Unless otherwise specified within the exempted fisheries authorized under this paragraph (a)(8), incidental catch is restricted, at a minimum, to the following:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description*. (A) Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraph (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake, combined, and red hake—up to the amounts specified in § 648.86(d); butterfish, Atlantic mackerel, or squid, up the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; Atlantic herring, up to the amount specified in § 648.204; and scup, up to the amount specified in § 648.128.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl*. Vessels fishing in the Small Mesh Areas I and II Exemption Programs described in § 648.80(a)(9)) must configure the vessel's gear with a raised footrope trawl, configured in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire

length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½ inch (1.2 cm) for the top leg, not larger than ⅝ inch (1.6 cm) for the bottom leg, and not larger than ¾ inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wing ends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5⁄16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than

the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and not available for immediate use as defined in § 648.2.

(D) *Incidental species provisions*. The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling*. The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Regulated Mesh Area specified in paragraph (a)(1) of this section, when not under a NE multispecies DAS, providing the vessel fishes in the GOM Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N lat.	W long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
SM6	43°58′	67°22′
SM7	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements*. (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area under the exemption specified in this paragraph (a)(11) must fish with dredge gear. The combined dredge width in use by, or in possession on board, may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(a)(3) and (4), respectively.

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, a vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area*. Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, a vessel may fish with gillnets in the GOM/GB Dogfish

and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N lat.	W long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption*. Unless otherwise prohibited in § 648.81, § 648.370, or § 648.371, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements*. (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery*. Unless otherwise prohibited in § 648.370 or § 648.371, vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(a)(3) and (4), respectively. The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N lat.	W long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°00′	70°13.2′
RF 12	42°00′	70°24.1′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N lat.	W long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) *Requirements*. (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or

call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-in (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than silver hake, offshore hake, and red hake, subject to the applicable possession limits as specified in § 648.86(d), except for the following allowable incidental species: Butterfish, Atlantic mackerel, and squid, up to the amounts specified in § 648.26; scup, up to the amount specified in § 648.128; spiny dogfish, up to the amount specified in § 648.235, and Atlantic herring, up to the amount specified in § 648.204.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling*. The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery*. Unless otherwise prohibited in § 648.370 or § 648.371, vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N lat.	W long.
GRF1	43°15′	70°35.4′
GRF2	43°15′	70°00′
GRF3	43°25.2′	70°00′

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA—Continued

[July 1 through November 30]

Point	N lat.	W long.
GRF4	43°41.8′	69°20′
GRF5	43°58.8′	69°20′

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-in (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than silver hake and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, and red hake, subject to the possession limit specified in § 648.86, except for the following allowable incidental species: Butterfish, Atlantic mackerel, and squid, up to the amounts specified in § 648.26; Atlantic herring, up to the amount specified in § 648.204; and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of ⅜-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea

sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(c), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1]The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK EXEMPTION AREA

Point	N. latitude	W. longitude
G6	40°55.5′	66°38′
G7	40°45′	68°00′
G8	40°37′	68°00′
G9	40°30′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12	(1)	70°00′

[1]Northward to its intersection with the shoreline of mainland Massachusetts.

(18) *Great South Channel Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.370 or § 648.371, vessels issued a LAGC scallop permit, including limited access scallop permits that have used up their DAS allocations, may fish in the Great South Channel Scallop Dredge Exemption Area, as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS or on a sector trip, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section and applicable scallop regulations in subpart D of this part.

(i) *Area Definition.* The Great South Channel Scallop Dredge Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
GSC 1	42°06 [min]	69°40 [min]
GSC 2	41°30 [min]	69°10 [min]
GSC 3	41°30 [min]	69°23 [min]
GSC 4	40°50 [min]	68°49.2 [min]
GSC 5	40°50 [min]	69°29.46 [min]
GSC 6	41°10 [min]	69°50 [min]
GSC 7	41°10 [min]	70°00 [min]
GSC 8	41°35 [min]	70°00 [min]
GSC 9	41°35 [min]	69°40 [min]

(ii) *Requirements.* (A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the Great South Channel Scallop Dredge Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(19) *Cape Cod Spiny Dogfish Exemption Areas.* Unless otherwise prohibited in § 648.370 or § 648.371, vessels issued a NE multispecies limited access permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the Eastern or Western Cape Cod Spiny Dogfish Exemption Area as defined under paragraphs (a)(19)(i) and (ii) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements for the Eastern or Western area, specified in paragraphs

(a)(19)(i) and (ii) of this section, respectively.

(i) *Eastern area definition.* The Eastern Cape Cod Spiny Dogfish Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request): Eastern Cape Cod Spiny Dogfish Exemption Area [June 1 through December 31, unless otherwise specified in paragraph (a)(19)(i)(A) of this section]

Point	N. latitude	W. longitude
CCD 1	42/00′	70/00′
CCD 2	42/00′	69/47.5′
CCD 3	41/40′	69/47.5′
CCD 4	41/29.5′	69/35.5′
CCD 5	41/29.5′	69/23′
CCD 6	41/26′	69/20′
CCD 7	41/20′	69/20′
CCD 8	41/20′	(1)
CCD 9	(2)	70/00′
CCD 10	(3)	70/00′
CCD 11	(4)	70/00′
CCD 1	42/00′	70/00′

[1] The eastern coastline of Nantucket, MA at 41°20′ N. lat.
[2] The northern coastline of Nantucket, MA at 70°00′ W. long.
[3] The southern coastline of Cape Cod, MA at 70°00′ W. long., then along the eastern coastline of Cape Cod, MA to Point—11
[4] The northern coastline of Cape Cod, MA, at 70°00′ W. long.

(A) *Requirements.* (*1*) A vessel fishing in the Eastern Cape Cod Spiny Dogfish Exemption Area specified in this paragraph (a)(19) may not fish for, possess on board, or land any NE regulated species in accordance with the requirements of paragraph (a)(19) of this section.

(*2*) Vessels may use gillnet gear, as specified in § 648.80(a)(4)(iv), or longline gear as specified in § 648.80(a)(4)(v), from June 1 through December 31.

(*3*) Vessels may use handgear from June 1 through August 31.

(B) [Reserved]

(ii) *Western area definition.* The Western Cape Cod Spiny Dogfish Exemption Area is bounded on the north by 42°11.5′ N. lat., bounded on the east by 70°00 W. long., and bounded on the south and west by the coast of Massachusetts (copies of a chart depicting the area are available from the Regional Administrator upon request).

(A) *Requirements.* (*1*) A vessel fishing in the Western Cape Cod Spiny Dogfish Exemption Area specified in this paragraph (a)(19) may not fish for, possess on board, or land any NE regulated species in accordance with the requirements of paragraph (a)(19) of this section.

(*2*) Vessels may use longline gear as specified in § 648.80(a)(4)(v), and handgear from June 1 through August 31.

(B) [Reserved]

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and § 648.85(b)(6), and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use as defined in § 648.2, except midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use as defined in § 648.2, on a vessel or used by a

vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels*. When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use as defined in § 648.2 on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*. For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), to vessels fishing with gillnet gear under a monkfish-only DAS in the SNE Dogfish Gillnet Exemption Area in accordance with the provisions specified under paragraph (b)(7)(i)(A) of this section; to vessels fishing with gillnet gear under a monkfish-only DAS in the Mid-Atlantic Exemption Area in accordance with the provisions specified under paragraph (c)(5)(ii) of this section; or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels*. A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft(91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels—(1) Number of nets*. A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels may stow additional nets in accordance with the definition of not available for immediate use as defined in § 648.2 not to exceed 150 nets, counting the deployed net.

(*2*) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags*. Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags*. See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions*. Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing,

or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (b)(12), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed and not available for immediate use as defined in § 648.2.

(3) *Exemptions*—(i) *Species exemption.* Unless otherwise restricted in § 648.86, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (caught by trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate

Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10′ N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must comply with the minimum mesh size specified under § 648.91(c)(1)(i).

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under the SNE Monkfish and Skate Gillnet Exemption may only fish for, possess on board, or land monkfish as specified in § 648.94(b), spiny dogfish up to the amount specified in § 648.235, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed and not available for immediate use as defined in § 648.2.

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under the SNE Dogfish Gillnet Exemption may only fish for, possess on board, or land dogfish and the bycatch

species and amounts specified in paragraph (b)(3) of this section, unless fishing under a monkfish DAS. A vessel fishing under this exemption while on a monkfish-only DAS may also fish for, possess on board, and land monkfish up to the amount specified in § 648.94.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net. A vessel fishing under this exemption while on a monkfish-only DAS may not fish with, possess, haul, or deploy more than 50 roundfish gillnets, as defined in § 648.2.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption*. A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area*. A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeastly through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed and not available for immediate use as defined in § 648.2 while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition*. The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. lat.	W. long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′ [1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE RMA when not under a NE multispecies DAS, provided the vessel fishes in the SNE Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south and east by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Sc1	(1)	72°30′
Sc2	40°00′	72°30′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	(2)	70°00′
Sc7	(3)	70°00′
Sc8	(4)	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Sc9	41°00′	(1)
Sc10	41°00′	71°40′
Sc11	(2)	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

(ii) *Exemption program requirements*. (A) A vessel fishing in the SNE Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The minimum mesh size used in the twine top of scallop dredges must be 10 in (25.4 cm).

(12) *SNE Skate Bait Trawl Exemption Area*. Vessels issued an open access skate permit and a skate bait Letter of Authorization as specified in § 648.322(c) that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the SNE Skate Bait Trawl Exemption Area as defined under paragraph (b)(12)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (b)(1)(ii) of this section.

(i) *Area definition*. The SNE Skate Bait Trawl Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SNE SKATE BAIT TRAWL EXEMPTION AREA

[July 1 through October 31]

Point	N. lat.	W. long.
SBT 1	Southeastern MA	71°00′
SBT 2	41°00′	71°00′
SBT 3	41°00′	72°05′
SBT 4	Southern CT	72°05′

(ii) *Requirements*. (A) A vessel fishing in the SNE Skate Bait Trawl Exemption Area specified in this paragraph (b)(12) may not fish for, possess on board, or land any NE regulated species.

(B) Vessels must use trawl gear, as specified in § 648.80(b)(2)(i).

(C) Vessels must possess an active skate bait letter of authorization issued by the Regional Administrator, as specified in § 648.322(c) and fish pursuant to the terms of authorization.

(D) Fishing may only occur from July 1 through October 31 of each fishing year.

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition*. The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraph (c)(2)(iii) of this section, and

§ 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use as defined in § 648.2, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using dehookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), to vessels fishing with gillnet gear under a monkfish-only DAS in the Mid-Atlantic Exemption Area in accordance with the provisions specified under paragraph (c)(5)(ii) of this section, or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the MA Regulated Mesh Area may not

fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) *Day gillnet vessels*—(*1*) *Number of nets*. A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels may stow additional nets in accordance with the definition of not available for immediate use as defined in § 648.2 not to exceed 150 nets, counting the deployed net.

(*2*) *Net size requirement*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags*. Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags*. See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption*. Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions*. See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area*. (i) The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(ii) *Monkfish/Spiny Dogfish Exempted Gillnet Fishery*. A vessel fishing on a monkfish-only DAS may fish with, use, or possess gillnets in the MA Exemption Area with a mesh size smaller than the minimum size specified in paragraph (b)(2)(iv) or (c)(2)(v) of this section, provided the vessel complies with the following requirements:

(A) *Number of nets*. Notwithstanding the provisions specified in paragraphs (c)(2)(v)(A) and (B) of this section and § 648.92(b)(8), a vessel fishing on a monkfish-only DAS within the MA Exemption Area may not fish with, possess, haul, or deploy more than 50 roundfish gillnets, as defined in § 648.2.

(B) *Minimum mesh size*. The minimum mesh size for any roundfish gillnet not stowed and available for immediate use by a vessel fishing on a monkfish-only DAS within the MA Exemption Area is 5 inches (12.7 cm) throughout the entire net.

(C) *Possession limits*. A vessel fishing on a monkfish-only DAS within the MA Exemption Area may fish for, possess on board, or land monkfish up to the amount specified in § 648.94, spiny dogfish up to the amount specified in § 648.235, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(d) *Midwater trawl gear exempted fishery*. Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with the following restrictions:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N lat. and in the areas described in § 648.81(c)(3) and (4); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.; and

(ii) The vessel is issued a letter of authorization for a minimum of 7 days. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time.

(3) The vessel carries a NMFS-approved sea sampler/observer, if requested by the Regional Administrator;

(4) The vessel does not fish for, possess or land NE. multispecies, except that a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit and fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit

and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may possess and land haddock and other regulated multispecies consistent with the catch caps and possession restrictions in § 648.86(a)(3) and (k). Such haddock or other regulated NE. multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE. multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed Area I, as defined in § 648.81(c)(3), at any point in the trip; and

(6) A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip with midwater trawl gear, or a vessel issued a Limited Access Incidental Catch Herring Permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for a vessel that has not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(7) [Reserved]

(e) *Purse seine gear exempted fishery*. Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator and complies with the following:

(i) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(ii) The vessel must carry a NMFS-approved sea sampler/observer, if requested to do so by the Regional Administrator;

(3) The vessel is issued a letter of authorization for a minimum of 7 days, and cancels it only as instructed by the Regional Administrator. The vessel can be issued LOAs for the midwater trawl exempted fishery and the purse seine exempted fishery at the same time; and

(4) The vessel does not fish for, possess, or land NE. multispecies, except that vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip may possess and land haddock or other regulated species consistent with possession restrictions in

§ 648.86(a)(3) and (k), respectively. Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to crossing the VMS demarcation line on their return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 6 hr prior to landing. The Regional Administrator may adjust the prior notification minimum time through publication of a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act.

(f) *Mesh measurements*—(1) *Gillnets*. Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets*. With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

(i) *Square-mesh measurement*. Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement*. Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction*. Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use, or attach any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction*. (i) Except as provided in paragraph (g)(5)

of this section, a fishing vessel may not use, or attach, any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (g)(1), subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition*. No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling, except as authorized under paragraph (d) of this section.

(4) *Brush-sweep trawl prohibition*. No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*—(i) *Nets of mesh size less than 2.5 inches (6.4 cm)*. A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4 cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(a)(3)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(a)(3)(iii).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm)*. A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes*—(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes*. In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(b)(2)(ii) and (d)(5)(ii)), must comply with the applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes*. In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(b)(2)(ii) and (d)(5)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels*. (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board,

unless otherwise restricted by § 648.86(a)(2).

(2) Limited access scallop vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species or ocean pout, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS, but are prohibited from using scallop dredge gear on such trips.

(i) *State waters winter flounder exemption*. Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

[69 FR 22951, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.81 NE multispecies year-round and seasonal closed areas.

(a) *Year-round groundfish closed areas*. (1) *Restrictions*. No fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or on board a vessel in, the, Cashes Ledge, Western Gulf of Maine, or Closed Area II Closure Areas, unless otherwise allowed by or exempted under this part. Charts of the areas described in this section are available from the Regional Administrator upon request.

(2) *Exemptions*. Unless restricted by the requirements of subpart P of this part or elsewhere in this part, paragraph (a)(1) of this section does not apply to a fishing vessel or person on a fishing vessel when fishing under the following conditions:

(i) Fishing with or using exempted gear as defined under this part, except for pelagic gillnet gear capable of catching NE multispecies, unless fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided that:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) No regulated species or ocean pout are retained; and

(D) No other gear capable of catching NE multispecies is on board;

(ii) Fishing in the Midwater Trawl Gear Exempted Fishery as specified in § 648.80(d);

(iii) Fishing in the Purse Seine Gear Exempted Fishery as specified in § 648.80(e);

(iv) Fishing under charter/party or recreational regulations specified in § 648.89, provided that:

(A) A letter of authorization issued by the Regional Administrator is onboard the vessel, which is valid from the date of enrollment until the end of the fishing year;

(B) No harvested or possessed fish species managed by the NEFMC or MAFMC are sold or intended for trade, barter or sale, regardless of where the fish are caught;

(C) Only rod and reel or handline gear is on board the vessel; and

(D) No NE multispecies DAS are used during the entire period for which the letter of authorization is valid.

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

CASHES LEDGE CLOSURE AREA

Point	N lat.	W long.
CL1	43°07′ N	69°02′ W
CL2	42°49.5′ N	68°46′ W
CL3	42°46.5′ N	68°50.5′ W
CL4	42°43.5′ N	68°58.5′ W
CL5	42°42.5′ N	69°17.5′ W
CL6	42°49.5′ N	69°26′ W
CL1	43°07′ N	69°02′ W

(4) *Western Gulf of Maine Closure Area*. The Western Gulf of Maine Closure Area is defined by straight lines connecting the following points in the order stated:

WESTERN GULF OF MAINE CLOSURE AREA

Point	N latitude	W longitude
WGM1	43°15′	70°15′
WGM2	42°15′	70°15′
WGM3	42°15′	70°00′
WGM4	43°15′	70°00′
WGM1	43°15′	70°15′

(5) *Closed Area II Closure Area*. (i) The Closed Area II Closure Area is defined by straight lines, unless otherwise noted, connecting the following points in the order stated:

CLOSED AREA II CLOSURE AREA

Point	N lat.	W long.	Note
CAII1	41°00′	67°20′	
CAII2	41°00′	66°35.8′	
CAII3	41°18.45′	(1)	(2)
CAII4	(3)	67°20′	(2)
CAII5	42°22′	67°20′	
CAII1	41°00′	67°20′	

[1] The intersection of 41°18.45′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45′ N lat. and 66°24.89′ W long.

[2] From Point CAII3 to Point CAII4 along the U.S.-Canada Maritime Boundary.

[3] The intersection of 67°20′ W long. And the U.S.-Canada Maritime Boundary, approximately 42°22.06′ N lat. and 67°20′ W long.

(ii) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(5)(i) of this section does not apply to persons on fishing vessels or fishing vessels—

(A) Fishing with gears as described in paragraph (a)(2) this section.

(B) Fishing with tuna purse seine gear outside of the portion of Closed Area II known as the Habitat Area of Particular Concern, as described in § 648.370(g).

(C) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(8)(ii), respectively.

(D) Transiting the area, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2; and

(*1*) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(*2*) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA

II in accordance with the provisions of § 648.85(a)(3)(vii).

(E) Fishing for scallops within the Closed Area II Access Area defined in § 648.59(c)(3), during the season specified in § 648.59(c)(4), and pursuant to the provisions specified in § 648.60.

(b) *Gulf of Maine spawning groundfish closures*. (1) *Restrictions*. Unless allowed in this part, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or on board a vessel in, the spawning closure areas described in paragraphs (b)(3) and (4) of this section, during the times specified in this section. Charts depicting the areas defined here are available from the RA upon request.

(2) *Exemptions*. Paragraph (b)(1) of this section does not apply to a fishing vessel or person on a fishing vessel:

(i) That has not been issued a NE multispecies permit that is fishing exclusively in state waters;

(ii) That is fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for a vessel fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the vessel and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) No regulated species or ocean pout are retained; and

(D) No other gear capable of catching NE multispecies is on board;

(iii) That is fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless of where the species are caught;

(B) Any gear other than pelagic hook and line gear, as defined in this part, is properly stowed and not available for immediate use as defined in § 648.2; and

(C) No regulated species or ocean pout are retained; and

(iv) That is transiting pursuant to paragraph (e) of this section.

(3) *GOM Cod Spawning Protection Area*. Except as specified in paragraph (b)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or on board a vessel in, the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated:

GOM COD SPAWNING PROTECTION AREA

Point	N latitude	W longitude
CSPA1	42°50.95′	70°32.22′
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(4) *Winter Massachusetts Bay Spawning Protection Area*. Except as specified in paragraph (b)(2) of this section, from November 1 through January 31 of each year, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or be on board a vessel in, the Massachusetts Bay Protection Area, as defined on the west and south by the outer limit of Massachusetts waters and on the northeast by a straight line connecting the following points, which fall along the Massachusetts state waters boundary:

WINTER MASSACHUSETTS BAY SPAWNING PROTECTION AREA

Point	N latitude	W longitude
WSPA1	42° 23.61′	70° 39.21′
WSPA2	42° 07.68′	70° 26.79′

(5) *Spring Massachusetts Bay Spawning Protection Area*. (i) From April 15 through April 30 of each year, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or on board a vessel in the thirty- minute block defined by straight lines, unless otherwise noted, connecting the following points in the order stated:

SPRING MASSACHUSETTS BAY SPAWNING PROTECTION AREA

Point	N latitude	W longitude	Note
SSPA1	42°30′	(1)	
SSPA2	42°30′	70°30′	
SSPA3	42°00′	70°30′	
SSPA4	42°00′	(2)	(3)
SSPA5	(4)	71°00′	(3)
SSPA6	(5)	71°00′	(6)
SSPA1	42°30′	(1)	(6)

[1] The intersection of 42°30′ N lat. and the coastline at Marblehead, MA.
[2] The intersection of 42°00′ N lat. and the coastline at Kingston, MA.
[3] From Point SSPA4 to Point SSPA5 following the coastline of Massachusetts.
[4] The intersection of 71°00′ W long. and the coastline at Quincy, MA.
[5] The intersection of 71°00′ W long. and the northernmost coastline at East Boston, Boston, MA.
[6] From Point SSPA6 back to Point SSPA 1 following the coastline of Massachusetts.

(ii) Unless otherwise restricted in this part, the Spring Massachusetts Bay Spawning Protection Area closure does not apply to a fishing vessel or person on a fishing vessel that meets the criteria in paragraphs (d)(5)(ii) through (vi) and (x) of this section (listed under the exemptions for the GOM Cod Protection Closures). This includes recreational vessels meeting the criteria specified in paragraphs (d)(5)(v)(A) through (D) of this section.

(c) *Georges Bank Spawning Groundfish Closures*. (1) *Restrictions*. Unless otherwise allowed in this part, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used on board a vessel in the spawning closure areas described in paragraphs (b)(3) and (4) of this section, and during the times specified in this section. Charts depicting the areas defined here are available from the RA upon request.

(2) *Exemptions*. Paragraph (c)(1) of this section does not apply to a fishing vessel or person on a fishing vessel:

(i) That is fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the vessel and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) No regulated species or ocean pout are retained; and

(D) No other gear capable of catching NE multispecies is on board.

(ii) That is fishing for scallops consistent with the requirements of the scallop fishery management plan, including rotational access program requirements specified in § 648.59.

(iii) That is fishing in the mid-water trawl exempted fishery.

(iv) That is transiting pursuant to the requirements described in § 648.2.

(3) *Closed Area I North*. Except as specified in paragraph (c)(2) of this section, from February 1 through April 15 of each year, no fishing vessel or person on a fishing vessel may enter, fish, or be in; and no fishing gear capable of catching NE multispecies may be used or on board a vessel in, Closed Area I North, as defined by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH

Point	N lat.	W long.
CIN1	41°30′	69°23′
CIN2	41°30′	68°30′
CIN3	41°26′	68°30′
CIN4	41°04′	69°01′
CIN1	41°30′	69°23′

(4) *Closed Area II*. Except as specified in paragraph (c)(2) of this section, from February 1 through April 15 of each year, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or on board a vessel in, Closed Area II, as defined by straight lines, unless otherwise noted, connecting the following points in the order stated:

CLOSED AREA II

Point	N lat.	W long.	Note
CAII1	41°00′	67°20′	
CAII2	41°00′	66°35.8′	
CAII3	41°18.45	(1)	(2)
CAII4	(3)	67°20′	(2)
CAII5	42°22′	67°20′	
CAII1	41°00′	67°20′	

[1] The intersection of 41°18.45′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45′ N lat. and 66°24.89′ W long.
[2] From Point CAII3 to Point CAII4 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 67°20′ W long. and the U.S.-Canada Maritime Boundary, approximately 42°22.06′ N lat. and 67°20′ W long.

(d) *GOM Cod Protection Closures.* (1) *Restrictions.* Unless otherwise allowed in this part, no fishing vessel or person on a fishing vessel may enter, fish, or be in, and no fishing gear capable of catching NE multispecies may be used or on board a vessel in, GOM Cod Protection Closures I through V as described, and during the times specified, in paragraphs (d)(4)(i) through (v) of this section.

(2) *Review of closure.* The New England Fishery Management Council shall review the GOM Cod Protection Closures Areas specified in this section when the spawning stock biomass for GOM cod reaches the minimum biomass threshold specified for the stock (50 percent of SSB_{MSY}).

(3) *Seasons.* (i) GOM Cod Protection Closure I is in effect from May 1 through May 31.

(ii) GOM Cod Protection Closure II is in effect from June 1 through June 30.

(iii) GOM Cod Protection Closure III is in effect from November 1 through January 31.

(iv) GOM Cod Protection Closure IV is in effect from October 1 through October 31.

(v) GOM Cod Protection Closure V is in effect from March 1 through March 31.

(4) *GOM Cod Protection Closure Areas.* Charts depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Cod Protection Closure I.* GOM Cod Protection Closure I is the area bounded by the following coordinates connected in the order stated by straight lines, unless otherwise noted:

GOM COD PROTECTION CLOSURE I

[May 1–May 31]

Point	N latitude	W longitude
CPCI 1	43°30′ N	(1)
CPCI 2	43°30′ N	69°30′ W
CPCI 3	43°00′ N	69°30′ W
CPCI 4	43°00′ N	70°00′ W
CPCI 5	42°30′ N	70°00′ W
CPCI 6	42°30′ N	70°30′ W
CPCI 7	42°20′ N	70°30′ W
CPCI 8	42°20′ N	(2) (3)
CPCI 1	43°30′ N	(1) (3)

[1] The intersection of 43°30′ N latitude and the coastline of Maine.
[2] The intersection of 42°20′ N latitude and the coastline of Massachusetts.
[3] From Point 8 back to Point 1 following the coastline of the United States.

(ii) *GOM Cod Protection Closure II.* GOM Cod Protection Closure II is the area bounded by the following coordinates connected in the order stated by straight lines, unless otherwise noted:

GOM COD PROTECTION CLOSURE II

[June 1–June 30]

Point	N latitude	W longitude
CPCII 1	(1)	69°30′ W
CPCII 2	43°30′ N	69°30′ W
CPCII 3	43°30′ N	70°00′ W
CPCII 4	42°30′ N	70°00′ W
CPCII 5	42°30′ N	70°30′ W
CPCII 6	42°20′ N	70°30′ W
CPCII 7	42°20′ N	(2)(3)
CPCII 8	42°30′ N	((4))(3)
CPCII 9	42°30′ N	70°30′ W
CPCII 10	43°00′ N	70°30′ W
CPCII 11	43°00′ N	(5) (6)
CPCII 1	(1)	69°30′ W (6)

[1] The intersection of 69°30′ W longitude and the coastline of Maine.
[2] The intersection of 42°20′ N latitude and the coastline of Massachusetts.
[3] From Point 7 to Point 8 following the coastline of Massachusetts.
[4] The intersection of 42°30′ N latitude and the coastline of Massachusetts.
[5] The intersection of 43°00′ N latitude and the coastline of New Hampshire.
[6] From Point 11 back to Point 1 following the coastlines of New Hampshire and Maine.

(iii) *GOM Cod Protection Closure III.* GOM Cod Protection Closure III is the area bounded by the following coordinates connected in the order stated by straight lines, unless otherwise noted:

GOM COD PROTECTION CLOSURE III

[November 1–January 31]

Point	N latitude	W longitude
CPCIII 1	42°30′ N	(1)
CPCIII 2	42°30′ N	70°30′ W
CPCIII 3	42°15′ N	70°30′ W
CPCIII 4	42°15′ N	70°24′ W
CPCIII 5	42°00′ N	70°24′ W
CPCIII 6	42°00′ N	(2) (3)
CPCIII 1	42°30′ N	(1) (3)

[1] The intersection of 42°30′ N latitude and the Massachusetts coastline.
[2] The intersection of 42°00′ N latitude and the mainland Massachusetts coastline at Kingston, MA.
[3] From Point 6 back to Point 1 following the coastline of Massachusetts.

(iv) *GOM Cod Protection Closure IV.* GOM Cod Protection Closure IV is the area bounded by the following coordinates connected in the order stated by straight lines, unless otherwise noted:

GOM COD PROTECTION CLOSURE IV

[October 1–October 31]

Point	N latitude	W longitude
CPCIV 1	42°30′ N	(1)
CPCIV 2	42°30′ N	70°00′ W
CPCIV 3	42°00′ N	70°00′ W
CPCIV 4	42°00′ N	(2) (3)
CPCIV 1	42°30′ N	(1) (3)

[1] The intersection of 42°30′ N latitude and the Massachusetts coastline.
[2] The intersection of 42°00′ N latitude and the mainland Massachusetts coastline at Kingston, MA.
[3] From Point 4 back to Point 1 following the coastline of Massachusetts.

(v) *GOM Cod Protection Closure V.* GOM Cod Protection Closure V is the area bounded by the following coordinates connected in the order stated by straight lines:

GOM COD PROTECTION CLOSURE V

[March 1–March 31]

Point	N latitude	W longitude
CPCV 1	42°30′ N	70°00′ W
CPCV 2	42°30′ N	68°30′ W
CPCV 3	42°00′ N	68°30′ W
CPCV 4	42°00′ N	70°00′ W
CPCV 1	42°30′ N	70°00′ W

(5) *Exemptions.* The GOM cod protection closures specified in this section do not apply to a fishing vessel or person on board a fishing vessel under any of the following conditions:

(i) No multispecies permit has been issued and the vessel is fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, except for pelagic gillnet gear capable of catching NE multispecies, unless fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided that:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) No regulated species are retained; and

(D) No other gear capable of catching NE multispecies is on board;

(iii) Fishing in the Midwater Trawl Gear Exempted Fishery as specified in § 648.80(d);

(iv) Fishing in the Purse Seine Gear Exempted Fishery as specified in § 648.80(e);

(v) Fishing under charter/party or recreational regulations specified in § 648.89, provided that:

(A) A vessel fishing under charter/party regulations in a GOM cod protection closure described under paragraph (f)(4) of this section, has on board a letter of authorization issued by the Regional Administrator that is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater;

(B) No harvested or possessed fish species managed by the NEFMC or MAFMC are sold or intended for trade, barter or sale, regardless of where the fish are caught;

(C) Only rod and reel or handline gear is on board; and

(D) No NE multispecies DAS are used during the entire period for which the letter of authorization is valid;

(vi) Fishing with scallop dredge gear under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip;

(vii) Fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), or in the Small Mesh Area II Exemption Area, as specified in § 648.80(a)(9);

(viii) Fishing on a sector trip, as defined in this part, and in the GOM Cod Protection Closures IV or V, as specified in paragraphs (f)(4)(iv) and (v) of this section; or

(ix) Fishing under the provisions of a Northeast multispecies Handgear A permit, as specified at § 648.82(b)(6), and in the GOM Cod Protection Closures IV or V, as specified in paragraphs (f)(4)(iv) and (v) of this section.

(x) Transiting the area, provided it complies with the requirements specified in paragraph (e) of this section.

(e) *Transiting*. (1) Unless otherwise restricted or specified in this paragraph (e), a vessel may transit the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Cod Protection Closures, and the GOM Cod Spawning Protection Area, as defined in paragraphs (a)(3) and (4), (d)(4), and (b)(3), of this section, respectively, provided that its gear is stowed and not available for immediate use as defined in § 648.2.

(2) Private recreational or charter/party vessels fishing under the Northeast multispecies provisions specified at § 648.89 may transit the GOM Cod Spawning Protection Area, as defined in paragraph (b)(3) of this section, provided all bait and hooks are removed from fishing rods, and any regulated species on board have been caught outside the GOM Cod Spawning Protection Area and has been gutted and stored.

(f) *Restricted Gear Areas*—(1) *Restricted Gear Area Seasons*. No fishing vessel with mobile gear on board, or person on a fishing vessel with mobile gear on board, may fish or be in the specified Restricted Gear Areas, unless transiting, during the seasons below. No fishing vessel with lobster pot gear on board, or person on a fishing vessel with lobster pot gear on board, may fish in, and no lobster pot gear may be deployed or remain in the specified Restricted Gear Areas. Vessels with lobster pot gear on board may transit during the seasons listed in the table in this paragraph (f)(1).

	Mobile gear	Lobster pot gear
Restricted Gear Area I	October 1–June 15	June 16–September 30.
Restricted Gear Area II	November 27–June 15	June 16–November 26.
Restricted Gear Area III	June 16–November 26	January 1–April 30.
Restricted Gear Area IV	June 16–September 30	n/a.

(2) *Transiting*. Vessels with mobile gear may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed and not available for immediate use as defined in § 648.2.

(3) *Restricted Gear Area I*. Restricted Gear Area I is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
AB	40°02.45′ N	70°14.10′ W	(*)
AC	40°05.20′ N	70°10.90′ W	(*)
AD	40°03.75′ N	70°10.15′ W	(*)
AE	40°00.70′ N	70°08.70′ W	(*)
AF	39°59.20′ N	70°04.90′ W	(*)
AG	39°58.25′ N	70°03.00′ W	(*)
AH	39°56.90′ N	69°57.45′ W	(*)
AI	39°57.40′ N	69°55.90′ W	(*)
AJ	39°57.55′ N	69°54.05′ W	(*)
AK	39°56.70′ N	69°53.60′ W	(*)
AL	39°55.75′ N	69°41.40′ W	(*)
AM	39°56.20′ N	69°40.20′ W	(*)
AN	39°58.80′ N	69°38.45′ W	(*)
AO	39°59.15′ N	69°37.30′ W	(*)
AP	40°00.90′ N	69°37.30′ W	(*)
AQ	40°00.65′ N	69°36.50′ W	(*)
AR	39°57.85′ N	69°35.15′ W	(*)

Point	Latitude	Longitude	Note
AS	39°56.80′ N	69°34.10′ W	(*)
AT	39°56.50′ N	69°26.35′ W	(*)
AU	39°56.75′ N	69°24.40′ W	(*)
AV	39°57.80′ N	69°20.35′ W	(*)
AW	40°00.05′ N	69°14.60′ W	(*)
AX	40°02.65′ N	69°11.15′ W	(*)
AY	40°02.00′ N	69°08.35′ W	(*)
AZ	40°02.65′ N	69°05.60′ W	(*)
BA	40°04.10′ N	69°03.90′ W	(*)
BB	40°05.65′ N	69°03.55′ W	(*)
BC	40°08.45′ N	69°03.60′ W	(*)
BD	40°09.75′ N	69°04.15′ W	(*)
BE	40°10.25′ N	69°04.40′ W	(*)
BF	40°11.60′ N	69°05.40′ W	(*)
BG	40°11.00′ N	69°03.80′ W	(*)
BH	40°08.90′ N	69°01.75′ W	(*)
BI	40°05.30′ N	69°01.10′ W	(*)
BJ	40°05.20′ N	69°00.50′ W	(*)
BK	40°04.35′ N	69°00.50′ W	(*)
BL	40°03.65′ N	69°00.00′ W	(*)
BM	40°03.60′ N	68°57.20′ W	(*)
BN	40°05.70′ N	68°52.40′ W	(*)
BO	40°08.10′ N	68°51.00′ W	(*)
BP	40°08.70′ N	68°49.60′ W	(*)
BQ	40°06.90′ N	68°46.50′ W	(*)
BR	40°07.20′ N	68°38.40′ W	(*)
BS	40°07.90′ N	68°36.00′ W	(*)
BT	40°06.40′ N	68°35.80′ W	
BU	40°05.25′ N	68°39.30′ W	
BV	40°05.40′ N	68°44.50′ W	
BW	40°06.00′ N	68°46.50′ W	
BX	40°07.40′ N	68°49.60′ W	
BY	40°05.55′ N	68°49.80′ W	
BZ	40°03.90′ N	68°51.70′ W	
CA	40°02.25′ N	68°55.40′ W	
CB	40°02.60′ N	69°00.00′ W	
CC	40°02.75′ N	69°00.75′ W	
CD	40°04.20′ N	69°01.75′ W	
CE	40°06.15′ N	69°01.95′ W	
CF	40°07.25′ N	69°02.00′ W	
CG	40°08.50′ N	69°02.25′ W	
CH	40°09.20′ N	69°02.95′ W	
CI	40°09.75′ N	69°03.30′ W	
CJ	40°09.55′ N	69°03.85′ W	
CK	40°08.40′ N	69°03.40′ W	
CL	40°07.20′ N	69°03.30′ W	
CM	40°06.00′ N	69°03.10′ W	
CN	40°05.40′ N	69°03.05′ W	
CO	40°04.80′ N	69°03.05′ W	
CP	40°03.55′ N	69°03.55′ W	
CQ	40°01.90′ N	69°03.95′ W	
CR	40°01.00′ N	69°04.40′ W	
CS	39°59.90′ N	69°06.25′ W	
CT	40°00.60′ N	69°10.05′ W	
CU	39°59.25′ N	69°11.15′ W	
CV	39°57.45′ N	69°16.05′ W	
CW	39°56.10′ N	69°20.10′ W	
CX	39°54.60′ N	69°25.65′ W	
CY	39°54.65′ N	69°26.90′ W	
CZ	39°54.80′ N	69°30.95′ W	
DA	39°54.35′ N	69°33.40′ W	
DB	39°55.00′ N	69°34.90′ W	
DC	39°56.55′ N	69°36.00′ W	
DD	39°57.95′ N	69°36.45′ W	
DE	39°58.75′ N	69°36.30′ W	
DF	39°58.80′ N	69°36.95′ W	
DG	39°57.95′ N	69°38.10′ W	
DH	39°54.50′ N	69°38.25′ W	
DI	39°53.60′ N	69°46.50′ W	
DJ	39°54.70′ N	69°50.00′ W	
DK	39°55.25′ N	69°51.40′ W	
DL	39°55.20′ N	69°53.10′ W	
DM	39°54.85′ N	69°53.90′ W	
DN	39°55.70′ N	69°54.90′ W	

Point	Latitude	Longitude	Note
DO	39°56.15′ N	69°55.35′ W	
DP	39°56.05′ N	69°56.25′ W	
DQ	39°55.30′ N	69°57.10′ W	
DR	39°54.80′ N	69°58.60′ W	
DS	39°56.05′ N	70°00.65′ W	
DT	39°55.30′ N	70°02.95′ W	
DU	39°56.90′ N	70°11.30′ W	
DV	39°58.90′ N	70°11.50′ W	
DW	39°59.60′ N	70°11.10′ W	
DX	40°01.35′ N	70°11.20′ W	
DY	40°02.60′ N	70°12.00′ W	
DZ	40°00.40′ N	70°12.30′ W	
EA	39°59.75′ N	70°13.05′ W	
EB	39°59.30′ N	70°14.00′ W	(*)
AA	40°02.75′ N	70°16.10′ W	(*)

(4) *Restricted Gear Area II*. Restricted Gear Area II is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

Point	N latitude	W longitude	Note
AA	40°02.75′	70°16.10′	(*)
EB	39°59.30′	70°14.00′	(*)
EC	39°58.85′	70°15.20′	
ED	39°59.30′	70°18.40′	
EE	39°58.10′	70°19.40′	
EF	39°57.00′	70°19.85′	
EG	39°57.55′	70°21.25′	
EH	39°57.50′	70°22.80′	
EI	39°57.10′	70°25.40′	
EJ	39°57.65′	70°27.05′	
EK	39°58.58′	70°27.70′	
EL	40°00.65′	70°28.80′	
EM	40°02.20′	70°29.15′	
EN	40°01.00′	70°30.20′	
EO	39°58.58′	70°31.85′	
EP	39°57.05′	70°34.35′	
EQ	39°56.42′	70°36.80′	
ER	39°58.15′	70°48.00′	
ES	39°58.30′	70°51.10′	
ET	39°58.10′	70°52.25′	
EU	39°58.05′	70°53.55′	
EV	39°58.40′	70°59.60′	
EW	39°59.80′	71°01.05′	
EX	39°58.20′	71°05.85′	
EY	39°57.45′	71°12.15′	
EZ	39°57.20′	71°15.00′	
FA	39°56.30′	71°18.95′	
FB	39°51.40′	71°36.10′	
FC	39°51.75′	71°41.50′	
FD	39°50.05′	71°42.50′	
FE	39°50.00′	71°45.00′	
FF	39°48.95′	71°46.05′	
FG	39°46.60′	71°46.10′	
FH	39°43.50′	71°49.40′	
FI	39°41.30′	71°55.00′	
FJ	39°39.00′	71°55.60′	
FK	39°36.72′	71°58.25′	
FL	39°35.15′	71°58.55′	
FM	39°34.50′	72°00.75′	
FN	39°32.20′	72°02.25′	
FO	39°32.15′	72°04.10′	
FP	39°28.50′	72°06.50′	
FQ	39°29.00′	72°09.25′	
FR	39°29.75′	72°09.80′	(*)
FS	39°32.65′	72°06.10′	(*)
FT	39°35.45′	72°02.00′	(*)
FU	39°41.15′	71°57.10′	(*)
FV	39°46.95′	71°49.00′	(*)
FW	39°53.10′	71°42.70′	(*)
FX	39°52.60′	71°40.35′	(*)
FY	39°53.10′	71°36.10′	(*)
FZ	39°57.50′	71°20.60′	(*)
GA	40°00.70′	71°19.80′	(*)
GB	39°59.30′	71°18.40′	(*)
GC	40°02.00′	71°01.30′	(*)
GD	40°00.50′	70°57.60′	(*)
GE	40°00.10′	70°45.10′	(*)
GF	39°58.90′	70°38.65′	(*)
GG	39°59.15′	70°34.45′	(*)
GH	40°00.55′	70°32.10′	(*)
GI	40°03.85′	70°28.75′	(*)
GJ	39°59.75′	70°25.50′	(*)
GK	39°59.80′	70°21.75′	(*)
GL	40°00.70′	70°18.60′	(*)
AA	40°02.75′	70°16.10′	(*)

(5) *Restricted Gear Area III*. Restricted Gear Area III is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
GL	40°00.70′ N	70°18.60′ W	(*)
GK	39°59.80′ N	70°21.75′ W	(*)
GJ	39°59.75′ N	70°25.50′ W	(*)
GI	40°03.85′ N	70°28.75′ W	(*)
GH	40°00.55′ N	70°32.10′ W	(*)
GG	39°59.15′ N	70°34.45′ W	(*)
GF	39°58.90′ N	70°38.65′ W	(*)
GE	40°00.10′ N	70°45.10′ W	(*)

Point	Latitude	Longitude	Note
GD	40°00.50′ N	70°57.60′ W	(*)
GC	40°02.00′ N	71°01.30′ W	(*)
GB	39°59.30′ N	71°18.40′ W	(*)
GA	40°00.70′ N	71°19.80′ W	(*)
FZ	39°57.50′ N	71°20.60′ W	(*)
FY	39°53.10′ N	71°36.10′ W	(*)
FX	39°52.60′ N	71°40.35′ W	(*)
FW	39°53.10′ N	71°42.70′ W	(*)
FV	39°46.95′ N	71°49.00′ W	(*)
FU	39°41.15′ N	71°57.10′ W	(*)
FT	39°35.45′ N	72°02.00′ W	(*)
FS	39°32.65′ N	72°06.10′ W	(*)
FR	39°29.75′ N	72°09.80′ W	(*)
GM	39°33.65′ N	72°15.00′ W	
GN	39°47.20′ N	72°01.60′ W	
GO	39°53.75′ N	71°52.25′ W	
GP	39°55.85′ N	71°45.00′ W	
GQ	39°55.60′ N	71°41.20′ W	
GR	39°57.90′ N	71°28.70′ W	
GS	40°10.70′ N	71°10.25′ W	
GT	40°12.75′ N	70°55.05′ W	
GU	40°11.05′ N	70°45.80′ W	
GV	40°06.50′ N	70°40.05′ W	
GW	40°05.60′ N	70°17.70′ W	
AA	40°02.75′ N	70°16.10′ W	(*)

(6) *Restricted Gear Area IV*. Restricted Gear Area IV is defined by the following points connected in the order listed by straight lines (points followed by an asterisk are shared with an adjacent Restricted Gear Area):

Point	Latitude	Longitude	Note
AA	40°02.75′ N	70°16.10′ W	(*)
GX	40°07.80′ N	70°09.20′ W	
GY	40°07.60′ N	70°04.50′ W	
GZ	40°02.10′ N	69°45.00′ W	
HA	40°01.30′ N	69°45.00′ W	
HB	40°00.50′ N	69°38.80′ W	
HC	40°01.70′ N	69°37.40′ W	
HD	40°01.70′ N	69°35.40′ W	
HE	40°00.40′ N	69°35.20′ W	
HF	39°57.30′ N	69°25.10′ W	
HG	40°05.50′ N	69°09.00′ W	
HH	40°14.30′ N	69°05.80′ W	
HI	40°14.00′ N	69°04.70′ W	
HJ	40°11.60′ N	68°53.00′ W	
HK	40°13.60′ N	68°40.60′ W	
BS	40°07.90′ N	68°36.00′ W	(*)
BR	40°07.20′ N	68°38.40′ W	(*)
BQ	40°06.90′ N	68°46.50′ W	(*)
BP	40°08.70′ N	68°49.60′ W	(*)
BO	40°08.10′ N	68°51.00′ W	(*)
BN	40°05.70′ N	68°52.40′ W	(*)
BM	40°03.60′ N	68°57.20′ W	(*)
BL	40°03.65′ N	69°00.00′ W	(*)
BK	40°04.35′ N	69°00.50′ W	(*)
BJ	40°05.20′ N	69°00.50′ W	(*)
BI	40°05.30′ N	69°01.10′ W	(*)
BH	40°08.90′ N	69°01.75′ W	(*)
BG	40°11.00′ N	69°03.80′ W	(*)
BF	40°11.60′ N	69°05.40′ W	(*)
BE	40°10.25′ N	69°04.40′ W	(*)
BD	40°09.75′ N	69°04.15′ W	(*)
BC	40°08.45′ N	69°03.60′ W	(*)
BB	40°05.65′ N	69°03.55′ W	(*)
BA	40°04.10′ N	69°03.90′ W	(*)
AZ	40°02.65′ N	69°05.60′ W	(*)
AY	40°02.00′ N	69°08.35′ W	(*)
AX	40°02.65′ N	69°11.15′ W	(*)
AW	40°00.05′ N	69°14.60′ W	(*)
AV	39°57.80′ N	69°20.35′ W	(*)

Point	Latitude	Longitude	Note
AU	39°56.75′ N	69°24.40′ W	(*)
AT	39°56.50′ N	69°26.35′ W	(*)
AS	39°56.80′ N	69°34.10′ W	(*)
AR	39°57.85′ N	69°35.15′ W	(*)
AQ	40°00.65′ N	69°36.50′ W	(*)
AP	40°00.90′ N	69°37.30′ W	(*)
AO	39°59.15′ N	69°37.30′ W	(*)
AN	39°58.80′ N	69°38.45′ W	(*)
AM	39°56.20′ N	69°40.20′ W	(*)
AL	39°55.75′ N	69°41.40′ W	(*)
AK	39°56.70′ N	69°53.60′ W	(*)
AJ	39°57.55′ N	69°54.05′ W	(*)
AI	39°57.40′ N	69°55.90′ W	(*)
AH	39°56.90′ N	69°57.45′ W	(*)
AG	39°58.25′ N	70°03.00′ W	(*)
AF	39°59.20′ N	70°04.90′ W	(*)
AE	40°00.70′ N	70°08.70′ W	(*)
AD	40°03.75′ N	70°10.15′ W	(*)
AC	40°05.20′ N	70°10.90′ W	(*)
AB	40°02.45′ N	70°14.10′ W	(*)
AA	40°02.75′ N	70°16.10′ W	(*)

[83 FR 15266, Apr. 9, 2018, as amended at 83 FR 17313, Apr. 19, 2018]

§ 648.82 Effort-control program for NE multispecies limited access vessels.

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program and fish under a DAS, fish on a sector trip, or fish under the provisions of a limited access Small Vessel Category or Handgear A permits pursuant to paragraphs (b)(5) and (6) of this section, respectively, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories*. All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category*. This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-

mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category*. To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category*. To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category*. This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in § 648.80(a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii).

(5) *Small Vessel category*—(i) *DAS allocation*. A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified at § 648.86(g). Such a vessel is subject to the possession limits specified for other regulated species and ocean pout, as specified at § 648.86. Any vessel may elect to switch into the Small Vessel category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the

quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies;

(ii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks; and

(iii) *Declaration*. For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator stating an intent to fish south of the GOM Regulated Mesh Area and may not fish in any other area for a minimum of seven consecutive days from the effective date of the letter of authorization. For any such vessel that is required, or elects, to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must declare an intent to fish south of the GOM Regulated Mesh Area on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), provided that their gear is stowed and not available for immediate use as defined in § 648.2.

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline*. For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6–year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS

used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(2) [Reserved]

(d) *DAS categories and allocations*. For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS*. Calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iv) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land stocks of regulated species or ocean pout, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) For fishing year 2009 (May 1, 2009, through April 30, 2010), Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(iv) Starting in fishing year 2010 (beginning May 1, 2010), Category A DAS are defined as follows:

(A) For a vessel fishing under the provisions of the common pool, as defined in this part, Category A DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section, or reduced pursuant to § 648.87(b)(1)(iii).

(B) For a sector vessel, Category A DAS allocated for use when fishing in other fisheries that require the concurrent use of a NE multispecies DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph

(2) *Category B DAS*. Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use*. Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b)). Vessels that are required by the Monkfish Fishery Management Plan to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not

elect to use a NE multispecies Category B DAS to satisfy that requirement.

(B) *Calculation*. Regular B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) For fishing year 2009 (May 1, 2009, through April 30, 2010), Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(*4*) Starting in fishing year 2010 (beginning May 1, 2010), Regular B DAS are defined as follows:

(*i*) For a common pool vessel, Regular B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(*ii*) For a sector vessel, Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use*. Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation*. Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) For fishing year 2009 (May 1, 2009, through April 30, 2010), Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(*4*) Starting in fishing year 2010 (beginning May 1, 2010), Reserve B DAS are defined as follows:

(*i*) For a common pool vessel, Reserve B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(*ii*) For a sector vessel, Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(3) *Category C DAS*—(i) *Restriction on use*. Category C DAS are reserved and may not be fished.

(ii) *Calculation*. Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(e) *Accrual of DAS*. (1) When a vessel is participating in the NE multispecies DAS program, as required by the regulations in this part, NE multispecies DAS shall accrue as specified in paragraphs (e)(1)(i) and (ii) of this section and shall be based upon the time called, or logged into the DAS program, consistent with the DAS notification requirements specified in § 648.10. For the purpose of calculating trip limits specified in this part, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally.

(i) *Common pool vessels*. For a common pool vessel, Category A DAS shall accrue in 24-hr increments, unless otherwise required under paragraphs (n) or (o) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for 25 hr would be charged 48 hr of Category A instead of 25 hr.

(ii) [Reserved]

(2) [Reserved]

(3) *Regular B DAS Program 24-hr clock*. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on

the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

(f) *DAS credits*—(1) *Good Samaritan credit*. A limited access vessel fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, shall not accrue DAS for the time documented.

(2) *Canceled trip DAS credit*. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator must that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year

may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(3) *DAS credit for standing by entangled whales.* A limited access vessel fishing under the DAS program that reports and stands by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(i) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(ii) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(iii) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(iv) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status; date of first communication with the USCG; and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel category permit specified in paragraph (b)(5) of this section, or a vessel issued an open access Handgear B permit, as specified in § 648.88(a), may not fish for, possess, or land regulated species or ocean pout from March 1 through March 20 of each year. A common pool vessel must declare out and be out of the NE multispecies DAS program, and a sector must declare that the vessel will not fish with gear capable of catching NE multispecies (*i.e.*, gear that is not defined as exempted gear under this part), for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species, ocean pout, or non-exempt species during the period from May 12 through May 31.

(h) *Declaring DAS and blocks of time out*. A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program; declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j) of this section; and declaration of its 20-day period out of the NE multispecies DAS program, or, for a sector vessel that the vessel will not fish with gear capable of catching NE multispecies, using the notification requirements specified in § 648.10.

(i) [Reserved]

(j) *Gillnet restrictions*. A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS, under the provisions of the small vessel permit category, or on a sector trip with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels*. Unless otherwise exempted in this part, a Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS, the provisions of a small vessel permit category, or on a sector trip is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, as appropriate, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear*. All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery*. (A) During each fishing year, a Day gillnet vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section shall be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies, ocean pout, or non-exempt species harvested with gillnet gear and from having gillnet gear on board the vessel that is not stowed and not available for immediate use as defined in § 648.2 while fishing under a NE multispecies DAS, the provisions of the small vessel category permit, or on a sector trip from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable, unless otherwise exempt pursuant to § 648.87.

(B) Any such vessel shall declare its required time periods through the notification procedures specified in § 648.10(j)(2).

(C) During each period of time declared out, any such vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a sector trip, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS*. A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS shall accrue DAS as follows:

(*1*) A Day gillnet vessel on a common pool trip is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(*2*) A Day gillnet vessel on a sector trip is subject to the DAS accrual provisions of paragraph (e)(1)(ii) of this section.

(2) *Trip gillnet vessels*. When fishing under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a sector trip, a Trip gillnet vessel is required to remove all gillnet gear from the water before returning to port upon the completion of a fishing trip and calling out of a NE multispecies DAS, as applicable, under § 648.10(e)(5) or (h)(5), respectively. When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized by § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program*—(1) *Program description*. Eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels*. (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively.

(ii) Subject to the conditions and requirements of this part, DAS associated with a confirmation of permit history may be leased to another vessel without placing the permit on an active vessel.

(3) *Application to lease NE multispecies DAS*—(i) *Application information requirements*. An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application*. Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application*. The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the April 30 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of permit history*. Pursuant to paragraph (k)(2)(ii) of this section, DAS associated with a confirmation of permit history may be leased.

(ii) *Sub-leasing*. In a fishing year, a Lessor or Lessee vessel may not sublease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased

more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) [Reserved]

(v) *History of leased DAS use.* The history of leased DAS use shall be presumed to remain with the Lessor vessel. In the case of multiple leases to one vessel, the history of leased DAS use shall be presumed to remain with the Lessor in the order in which such leases were approved by NMFS. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS.

(vi) *Monkfish Category C, D, F, G and H vessels.* A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G, or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor vessel only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (k)(4)(xi) of this section.

(x) *Leasing by vessels fishing under a sector allocation.* A sector vessel may not lease DAS to or from common pool vessels, but may lease DAS to or from another sector vessel during the fishing year in which the vessel is a member of a sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* Unless otherwise specified in paragraph (k)(4)(xi)(B) and (C) of this section, for the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Applicability of the one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision.

(C) *Duration of the one-time DAS Leasing Program baseline downgrade.* Unless otherwise specified in this paragraph (k)(4)(xi)(C) of this section, the downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer. With the exception of vessels combining DAS Leasing Program baselines from two different vessels through the DAS Transfer Program as outlined in paragraph (k)(4)(xi)(C)(2) of

this section, once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit.

(*1*) *Vessel replacement*. If the permit is transferred to another vessel via a vessel replacement, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade.

(*2*) *DAS Transfer Program*. For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid. For vessels involved in a DAS Transfer Program transaction where a combination of the transferor and transferee vessel baselines is adopted resulting in a new vessel baseline, any previous DAS Leasing Program baseline downgrade for either the transferor or transferee vessel will be voided and the transferee vessel would have an additional opportunity to downgrade its combined DAS Leasing Program baseline.

(l) *DAS Transfer Program*. Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions*. (i) The transferor vessel must transfer all of its DAS. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or the vessel owner could choose to adopt the larger baseline of the two vessels provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) of this section is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, *i.e.*, those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) [Reserved]

(v) In any particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year.

Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

(vi) *Confirmation of permit history*. NE multispecies DAS associated with a Confirmation of Permit History may be transferred.

(vii) *Transfer by sector vessels*. A sector vessel may not transfer DAS to or from vessels that are fishing under the provisions of the common pool or another sector, but may transfer DAS to or from another vessel participating in that vessel's sector during the fishing year in which the vessel is a member of a particular sector.

(viii) Unless otherwise restricted by this part, a vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(2) *Application to transfer DAS*. Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements*. An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(ii) *Approval of transfer application*. Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application*. The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

(m) [Reserved]

(n) *NE multispecies common pool accountability measure (AM)*. Common pool vessels are subject to the following AMs, in addition to the DAS accrual provisions specified in paragraph (e) of this section and other measures specified in this part.

(1) *Differential DAS counting AM for fishing years 2010 and 2011*. Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs

specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year, once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(H)(*2*). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters outside the FMP, and the common pool's share of the 2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If, based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Differential DAS Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area, pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential

DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded up to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

(i) *Differential DAS counting areas.* The following differential DAS counting areas shall be used for the purposes of implementing the differential DAS counting AM specified in paragraph (n)(1) of this section:

(A) *Inshore GOM Differential DAS Area.* The Inshore GOM Differential DAS Area applies to the following stocks of regulated species: White hake, pollock, GOM cod, GOM haddock, CC/GOM yellowtail flounder, GOM winter flounder, and Atlantic wolffish. The Inshore GOM Differential DAS Area is defined as the area bounded on the west by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

INSHORE GOM DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
INGOM1	(1)	69°30′
INGOM2	43°00′	69°30′
INGOM3	43°00′	70°00′
INGOM4	(2)	70°00′

[1] Intersection with ME shoreline.
[2] North-facing shoreline of Cape Cod, MA.

(B) *Offshore GOM Differential DAS Area.* The Offshore GOM Differential DAS Area applies to the following stocks of regulated species: GOM haddock, white hake, pollock, redfish, witch flounder, American plaice, and Atlantic halibut. The Offshore GOM Differential DAS Area is defined as the area bounded on the north by the shoreline of Maine, bounded on the east by the U.S./Canadian maritime boundary, and bounded on the south and west by straight lines connecting the following points in the order stated:

OFFSHORE GOM DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
CII3	42°22′	67°20′
OFFGOM1	42°20′	67°20′
OFFGOM2	42°20′	70°00′
OFFGOM5	43°00′	70°00′
INGOM2	43°00′	69°30′
INGOM1	(1)	69°30′

[1] Intersection with ME shoreline.

(C) *Inshore GB Differential DAS Area.* The Inshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, white hake, Atlantic halibut, redfish, pollock, CC/GOM yellowtail flounder, GB cod, GB haddock, SNE/MA winter flounder, and Atlantic wolffish. The Inshore GB Differential DAS Area is defined as the area bounded by straight lines connecting the following points in the order stated:

INSHORE GB DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
G9	(1)	70°00′
G10	42°20′	70°00′
IGB1	42°20′	68°50′

INSHORE GB DIFFERENTIAL DAS AREA—Continued

Point	N. latitude	W. longitude
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

1 The intersection of the Cape Cod, MA, coastline and 70°00′ W. longitude.
2 South-facing shoreline of Cape Cod, MA.

(D) *Offshore GB Differential DAS Area.* The Offshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, Atlantic halibut, northern windowpane flounder, GB cod, GB haddock, GB yellowtail flounder, and GB winter flounder. The Offshore GB Differential DAS Area is defined as the area bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

OFFSHORE GB DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
OGB1	42°20′	67°20′
CII3	(1)	67°20′
OGB2	40°10′	(1)
OGB3	40°10′	68°50′
IGB1	42°20′	68°50′

1 The U.S./Canada maritime boundary as it intersects with the EEZ.

(E) *SNE/MA Differential DAS Area.* The SNE/MA Differential DAS Area applies to the following stocks of regulated species or ocean pout: SNE/MA winter flounder, SNE/MA yellowtail flounder, southern windowpane flounder, and ocean pout. The SNE/MA Differential DAS Area is defined as the area bounded on the north and west by the coastline of the United States, bounded on the east and south by straight lines connecting the following points in the order stated:

SNE/MA DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′

SNE/MA DIFFERENTIAL DAS AREA—Continued

Point	N. latitude	W. longitude
SNEDA1	40°10′	68°50′
SNEDA2	40°10′	73°10′
SNEDA3	39°50′	73°10′
SNEDA4	39°50′	(2)

1 South-facing shoreline of Cape Cod, MA.
2 East-facing shoreline of NJ.

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), or the inseason differential DAS counting adjustment specified in paragraph (o) of this section, the following differential DAS factor shall, except as provided in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section, and implemented in a manner consistent with the Administrative Procedure Act.

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change
1.0	No change
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

(iii) *Mixed-stock exception.* When determining the differential DAS counting AM specified in this paragraph (n)(1), the Regional Administrator shall conduct an analysis to determine whether the mixed-stock exception, as specified in § 600.310(m), may be applicable. If the analysis concludes that the mixed-stock exception is applicable, the Regional Administrator shall modify or not apply a differential DAS counting AM on specific stocks, as appropriate, in accordance with the mixed-stock exception.

(iv) *Fishing year 2012.* Any adjustments to DAS counting necessary as a result of either underharvesting or overharvesting any of the sub-ACLs specified for common pool vessels during the 2011 fishing year pursuant to § 648.90(a)(4) shall become effective and

remain effective for the duration of fishing year 2012 in addition to the implementation of the trimester TAC AM specified in paragraph (n)(2) of this section.

(2) *Trimester TAC AM for fishing years 2012 and beyond.* Beginning in fishing year 2012, common pool vessels shall be subject to the following restrictions:

(i) *Trimester TACs*—(A) *Trimester TAC distribution.* With the exception of SNE/MA winter flounder, any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into 4-month trimesters, beginning at the start of the fishing year (*i.e.*, Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows:

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GB cod	28	34	38
GOM cod	49	33	18
GB haddock	27	33	40
GOM haddock	27	26	47
GB yellowtail flounder	19	30	51
SNE/MA yellowtail flounder	21	28	51
CC/GOM yellowtail flounder	57	26	17
American plaice	74	8	18
Witch flounder	55	20	25
GB winter flounder	8	24	68
GOM winter flounder	37	38	25
Redfish	25	31	44
White hake	38	31	31
Pollock	28	35	37

(B) *Trimester TAC adjustment.* For stocks that have experienced early closures (*e.g.*, Trimester 1 or Trimester 2 closures), the Regional Administrator may use the biennial adjustment process specified in § 648.90 to revise the distribution of trimester TACs specified in paragraph (n)(2)(i)(A) of this section. Future adjustments to the distribution of trimester TACs shall use catch data for the most recent 5-year period prior to the reevaluation of trimester TACs.

(ii) *Stock area closures.* Unless otherwise specified in this paragraph (n)(2)(ii), if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred to all common pool vessels on a NE multispecies DAS using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred. Common pool vessels holding either a Handgear A or B permit and fishing with handgear or tub trawls are exempt from stock area closures for white hake. The Regional Administrator may exempt Handgear A and B permitted vessels from stock area closures for other stocks pursuant to this paragraph (n)(2)(ii) if it is determined that catches of the respective species

or stock by these vessels are less than 1 percent of the common pool catch of that species or stock. The Regional Administrator shall make such determination prior to the start of the fishing year through a notice published in the FEDERAL REGISTER, consistent with the Administrative Procedure Act, and any such determination shall remain in effect until modified.

(A) *GB Cod Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB COD TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1	42° 20′	70° 00′
2	42° 20′	(1)
3	41° 50′	(1)
4	41° 50′	67° 40′
5	41° 10′	67° 40′
6	41° 10′	67° 10′
7	41° 00′	67° 10′
8	41° 00′	67° 00′
9	40° 50′	67° 00′
10	40° 50′	66° 50′
11	40° 40′	66° 50′
12	40° 40′	66° 40′
13	39° 50′	66° 40′
14	39° 50′	68° 50′
15	41° 00′	68° 50′
16	41° 00′	69° 30′
17	41° 10′	69° 30′
18	41° 10′	69° 50′
19	41° 20′	69° 50′
20	41° 20′	(2)
21	(3)	70° 00′
22	(4)	70° 00′
23	(5)	70° 00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(B) *GOM Cod Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM COD TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1	(1)	69° 20′
2	43° 40′	69° 20′
3	43° 40′	69° 00′
4	43° 10′	69° 00′
5	43° 10′	69° 10′
6	43° 00′	69° 10′
7	43° 00′	69° 20′
8	42° 50′	69° 20′
9	42° 50′	69° 40′
10	42° 20′	69° 40′
11	42° 20′	70° 00′
12	(2)	70° 00′

[1] Intersection with ME shoreline.
[2] North-facing shoreline of Cape Cod, MA.

(C) *GB Haddock Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB HADDOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	70°00′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB7	41°00′	68°50′
GB8	41°00′	69°30′
GB9	41°10′	69°30′
GB10	41°10′	69°50′
GB11	41°20′	69°50′
GB12	41°20′	(2)
GB13	(3)	70°00′
GB14	(4)	70°00′
GB15	(5)	70°00′
GB1	42°20′	70°00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(D) *GOM Haddock Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM HADDOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	(1)	69°20′
GOM2	43°40′	69°20′
GOM3	43°40′	69°00′
GOM4	43°20′	69°00′
GOM5	43°20′	67°40′
GOM6	(2)	67°40′
GOM7	42°53.1′	67°44.4′
GOM8	(2)	67°40′
GOM9	42°20′	67°40′
GOM10	42°20′	70°00′
GOM12	(3)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] North-facing shoreline of Cape Cod, MA.

(E) *GB Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	68°50′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(F) *SNE/MA Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the SNE/MA Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
SNEMA1	(1)	70°00′
SNEMA2	(2)	70°00′
SNEMA3	(3)	70°00′
SNEMA4	39°50′	70°00′
SNEMA5	39°50′	71°40′
SNEMA6	40°00′	71°40′
SNEMA7	40°00′	73°00′
SNEMA8	(4)	73°00′

SNE/MA YELLOWTAIL FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
SNEMA9	41°00′	(5)
SNEMA10	41°00′	71°40′
SNEMA11	(6)	71°40′

[1] South-facing shoreline of Cape Cod, MA.
[2] North-facing shoreline of Nantucket, MA.
[3] South-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Long Island, NY.
[5] East-facing shoreline of Long Island, NY.
[6] Intersection with RI shoreline.

(G) *CC/GOM Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the CC/GOM Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
CCGOM1	42°50'	(1)
CCGOM2	42°50′	69°40′
CCGOM3	42°20′	69°40′
CCGOM4	42°20′	68°50′
CCGOM5	41°00′	68°50′
CCGOM6	41°00′	69°30′
CCGOM7	41°10′	69°30′
CCGOM8	41°10′	69°50′
CCGOM9	41°20′	69°50′
CCGOM10	41°20′	(2)
CCGOM11	(3)	70°00′
CCGOM12	(4)	70°00′

[1] Intersection with MA shoreline.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of MA.

(H) *American Plaice Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

AMERICAN PLAICE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1	(1)	68°00′
2	44°10′	67°50′
3	44°00′	67°50′
4	44°00′	67°40′
5	(2)	67°40′
6	42°53.1′	67°44.4′
7	(2)	67°40′

AMERICAN PLAICE TRIMESTER TAC AREA—Continued

Point	N. Latitude	W. Longitude
8	41°10′	67°40′
9	41°10′	67°10′
10	41°00′	67°10′
11	41°00′	67°00′
12	40°50′	67°00′
13	40°50′	66°50′
14	40°40′	66°50′
15	40°40′	66°40′
16	39°50′	66°40′
17	39°50′	68°50′
18	41°00′	68°50′
19	41°00′	69°30′
20	41°10′	69°30′
21	41°10′	69°50′
22	41°20′	69°50′
23	41°20′	(3)
24	(4)	70°00′
25	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(I) *Witch Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Witch Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

WITCH FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1	(1)	68°00′
2	44°10′	67°50′
3	44°00′	67°50′
4	44°00′	67°40′
5	(2)	67°40′
6	42°53.1′	67°44.4′
7	(2)	67°40′
8	41°10′	67°40′
9	41°10′	67°10′
10	41°00′	67°10′
11	41°00′	67°00′
12	40°50′	67°00′
13	40°50′	66°50′
14	40°40′	66°50′
15	40°40′	66°40′
16	39°50′	66°40′
17	39°50′	68°50′
18	41°00′	68°50′
19	41°00′	69°30′
20	41°10′	69°30′
21	41°10′	69°50′
22	41°20′	69°50′
23	41°20′	(3)
24	(4)	70°00′
25	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(J) *GB Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1	42°20′	68°50′
2	42°20′	(1)
3	40°30′	(1)
4	40°30′	66°40′
5	39°50′	66°40′
6	39°50′	68°50′

[1] U.S./Canada maritime boundary

(K) *GOM Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	42°50′	(1)
GOM2	42°50′	69°40′
GOM3	42°20′	69°40′
GOM4	42°20′	70°00′
GOM5	(2)	70°00′

[1] Intersection with MA shoreline
[2] North-facing shoreline of Cape Cod, MA

(L) *Redfish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′

REDFISH TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear, except for Handgear A and B permitted vessels using handgear or tub trawls, within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1	(1)	69°20′
2	43°40′	69°20′
3	43°40′	69°00′
4	43°20′	69°00′
5	43°20′	67°40′
6	(2)	67°40′
7	42°53.1′	67°44.4′
8	(2)	67°40′
9	41°20′	67°40′
10	41°20′	68°10′
11	41°10′	68°10′
12	41°10′	68°20′
13	41°00′	68°20′
14	41°00′	69°30′
15	41°10′	69°30′
16	41°10′	69°50′
17	41°20′	69°50′
18	41°20′	(3)
19	(4)	70°00′
20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(N) *Pollock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(iii) *Trimester TAC overage/underage.* If any trimester TAC, as specified in paragraph (n)(2)(i) of this section, is not caught during Trimester 1 or 2, the uncaught portion of the trimester TAC shall be carried forward into the next trimester. Uncaught portions of any trimester TAC following Trimester 3 may not be carried over into the following fishing year. If any trimester TAC is exceeded during the Trimesters 1 or 2, the overage shall be deducted from the Trimester 3 TAC for that stock. If the entire sub-ACL for a particular stock that is allocated to the common pool is exceeded (i.e., the common pool catch of that stock at the end of the fishing year, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch by other subcomponents of the fishery pursuant to § 648.90(a)(5), exceeds all three trimester TACs for that stock combined), an amount equal to the overage shall be deducted from the sub-ACL for that stock that is allocated to common pool vessels pursuant to § 648.90(a)(4) for the following fishing year.

(iv) [Reserved]

(v) *Adjustments to trimester TACs*. The distribution of trimester TACs specified in paragraph (n)(2)(i) of this section may be revised pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2) and shall use the distribution of landings of the most recent 5-year period available.

(vi) *Trip limit adjustment*. When 60 percent of the northern or southern windowpane flounder, ocean pout, or Atlantic halibut sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii)(H)(*2*) is projected to be caught, the Regional Administrator may specify, consistent with the APA, a possession limit for these stocks that is calculated to prevent the yearly sub-ACL from being exceeded prior to the end of the fishing year.

(vii) *SNE/MA winter flounder AM*. If the common pool fishery sub-ACL for SNE/MA winter flounder is exceeded, including the common pool's share of any overage of the total ACL, as specified at § 648.90(a)(5), by an amount that exceeds the management uncertainty buffer, the AM described in this paragraph would be implemented in the following fishing year. The AM would be effective for the entire fishing year. Common pool vessels fishing on a NE Multispecies DAS with trawl gear may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6) in the SNE/MA Winter Flounder Trawl Gear AM Areas. The AM areas are defined below, and are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted.

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1	41°10′	71°40′ [1]
2	41°10′	71°20′
3	41°00′	71°20′
4	41°00′	71°40′

[1] Point 1 connects to Point 2 along 41°10′ N or the southern coastline of Block Island, RI, whichever is farther south.

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1	41°20′	70°30′
2	41°20′	70°20′
3	41°00′	70°20′
4	41°00′	70°30′

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 3

Point	N. Latitude	W. Longitude
1	41°20′	69°20′
2	41°20′	69°10′
3	41°10′	69°10′
4	41°10'	69°20'

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 4

Point	N. Latitude	W. Longitude
1	41°20′	69°20′
2	41°20′	([1])
3	([1])	69°00′
4	41°00′	69°00′
5	41°00′	69°10′
6	41°10′	69°10′
7	41°10′	69°20′

([1]) The southwest-facing boundary of Closed Area I.

(o) *Inseason adjustment to differential DAS counting for NE multispecies common pool vessels*. (1) In addition to the DAS accrual provisions specified in paragraphs (e) and (n) of this section, and other measures specified in this part, common pool vessels are subject to the following restrictions: The Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels as described in § 648.90(a)(4). This projection shall include catch by common pool vessels, as well as available information, regarding the catch of regulated species and ocean pout by vessels fishing for NE multispecies in State waters outside of the authority of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery. If it is projected that catch will exceed or under-harvest the common pool sub-ACL, the Regional Administrator may, at any time during the fishing year, implement a differential DAS counting factor to all Category A DAS used within the pertinent stock area(s), as specified in paragraph

(n)(1)(i) of this section, in a manner consistent with the Administrative Procedure Act. Notwithstanding the fact that the differential DAS accountability measures described in paragraph (n)(1) of this section are intended to address potential over-harvests in fishing year 2010 and 2011, the scope of the Regional Administrator authority specified in this paragraph (o) is not limited to FY 2010 and 2011.

(2) The differential DAS counting factor shall be based on the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified in § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod by the end of fishing year 2010, the Regional Administrator may implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels within the Inshore GOM Differential DAS Area during fishing year 2010 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch will simultaneously exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, the Regional Administrator may implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that the common pool vessel catch will exceed the GOM cod sub-ACL by a factor of 1.2 and the CC/GOM yellowtail flounder sub-ACL by a factor of 1.1, the Regional Administrator may implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels within the Inshore GOM Differential DAS Area during the fishing year. For any inseason differential DAS counting factor implemented, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS, because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged).

(3) For any inseason differential DAS counting factor implemented in fishing year 2011, the inseason differential DAS counting factor shall be applied in accordance with the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, and, if pursuant to paragraph (n)(1) of this section, in conjunction with a differential DAS counting factor also implemented for the same differential DAS area during fishing year 2011 as an AM. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011, as an AM due to a 20-percent overage of the GOM cod sub-ACL in fishing year 2010, and during fishing year 2011 the GOM cod sub-ACL was projected to be exceeded by 30 percent, an additional differential DAS factor of 1.3 would be applied to the DAS accrual rate as an inseason action during fishing year 2011. Under this example, the DAS accrual rate after both the AM and the inseason differential DAS rate is applied to FY 2011 in the Inshore GOM Differential DAS Counting Area would be 37.4 hr charged for every 24 hr fished—1.2 × 1.3 × 24-hr DAS charge.

[69 FR 22969, Apr. 27, 2004]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting § 648.82, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

2. At 75 FR 18319, Apr. 9, 2010, in § 648.82, paragraph (e)(1)(ii) was revised, however no (e)(1)(ii) existed, so it could not be revised.

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size (inches)
Cod	19 (48.3 cm)
Haddock	16 (40.6 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	13 (33 cm)
Yellowtail flounder	12 (30.5 cm)
American plaice (dab)	12 (30.5 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	7 (17.8 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the NE multispecies DAS program or on a sector trip may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. The weight of fillets and parts of fish, other than whole-gutted or gilled fish, shall be multiplied by 3. For the purposes of accounting for all catch by sector vessels as specified at § 648.87(b)(1)(v), the weight of all fillets and parts of fish, other than whole-gutted or gilled fish reported for at-home consumption shall be multiplied by a factor of 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(4) Vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in §§ 648.86(a)(3) and 648.86(k). Such fish may not be sold for human consumption.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

[69 FR 22974, Apr. 27, 2004, as amended at 71 FR 46876, Aug. 15, 2006; 72 FR 11276, Mar. 12, 2007; 75 FR 18328, Apr. 9, 2010; 76 FR 42585, July 19, 2011; 78 FR 26158, May 3, 2013]

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the

owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

(e) *Rope separator trawl.* A rope separator trawl is defined as a four-seam bottom trawl net (i.e., a net with a top and bottom panel and two side panels) modified to include both a horizontal separator panel and an escape opening in the bottom belly of the net below the separator panel, as further specified in paragraphs (e)(1) through (3) of this section.

(1) *Mesh size.* The minimum mesh size applied throughout the body and extension of a rope separator trawl must be 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof. Mesh in the bottom belly of the net must be 13-inch (33-cm) diamond mesh. Unless otherwise specified in this part, the codend mesh size must be consistent with mesh size requirements specified in § 648.80. The mesh size of a particular section of the rope separator trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(2) *Separator panel.* The separator panel must consist of parallel lines made of fiber rope, the ends of which are attached to each side of the net starting at the forward edge of the square of the net and running aft toward the extension of the net. The leading rope must be attached to the side panel at a point at least ⅓ of the number of meshes of the side panel above the lower gore, and the panel of ropes shall slope downward toward the extension of the net. For example, if the side panel of the net is 42 meshes tall, the leading rope must be attached at least 14 meshes above the lower gore. The forward ⅔ of the separator ropes that comprise the separator panel must be no farther than 26 inches (66 cm) apart, with the after ⅓ of the separator ropes that comprise the separator panel being no farther than 13 inches (33 cm) apart. The ends of the aftermost rope shall be attached to the bottom belly at a point ⅙ of the number of meshes of the after end of the bottom belly below the lower gore. The separator ropes should be of sufficient length not to impinge upon the overall shape of the net without being too long to compromise the selectivity of the net. The separator ropes may not be manipulated in any way that would inhibit the selectivity of the net by causing the separator ropes to dip toward the bottom belly of the net and obscure the escape opening, as defined in paragraph (e)(3) of this section.

(3) *Escape opening.* The escape opening must be positioned in the bottom belly of the net behind the sweep and terminate under the separator panel, as described in paragraph (e)(2) of this section. Longitudinal lines may be used to maintain the shape of the escape opening, as necessary. The escape opening shall be at least 18 meshes in both length and width.

[69 FR 22974, Apr. 27, 2004, as amended at 78 FR 26158, May 3, 2013]

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding*. No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section. These restrictions do not preclude fishing under an approved Special Access Program specified under paragraph (b) of this section.

(1) *U.S./Canada Management Areas*. A vessel issued a NE multispecies permit that meets the requirements of paragraph (a)(3) of this section may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area*. The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

WESTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 1	42°20′	68°50′
USCA 2	39°50′	68°50′
USCA 3	39°50′	66°40′
USCA 4	40°40′	66°40′
USCA 5	40°40′	66°50′
USCA 6	40°50′	66°50′
USCA 7	40°50′	67°00′
USCA 8	41°00′	67°00′
USCA 9	41°00′	67°20′
USCA 10	41°10′	67°20′
USCA 11	41°10′	67°40′
USCA 12	42°20′	67°40′
USCA 1	42°20′	68°50′

(ii) *Eastern U.S./Canada Area*. The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. latitude	W. longitude
USCA 12	42°20′	67°40′
USCA 11	41°10′	67°40′
USCA 10	41°10′	67°20′
USCA 9	41°00′	67°20′

EASTERN U.S./CANADA AREA—Continued

Point	N. latitude	W. longitude
USCA 8	41°00′	67°00′
USCA 7	40°50′	67°00′
USCA 6	40°50′	66°50′
USCA 5	40°40′	66°50′
USCA 4	40°40′	66°40′
USCA 15	40°30′	66°40′
USCA 14	40°30′	65°44.3′
USCA 13	42°20′	67°18.4′
USCA 12	42°20′	67°40′

(2) *TAC allocation*—(i) *Process for establishing TACs*. The amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (D) of this section.

(A) To the extent practicable, by June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) To the extent practicable, by July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) To the extent practicable, by August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) To the extent practicable, by October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations,

the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year as a subset of the ACLs for these stocks available to the commercial fishery pursuant to § 648.90(a)(4). NMFS shall review the Council's recommendations and shall publish the proposed TACs in the FEDERAL REGISTER and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the FEDERAL REGISTER. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(ii) *TAC Overages*. Any overages of the overall Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder U.S. TACs caused by an overage of the component of the U.S. TAC specified for either the common pool, individual sectors, the scallop fishery, or any other fishery, pursuant to this paragraph (a)(2) and § 648.90(a)(4), that occur in a given fishing year shall be subtracted from the respective TAC component responsible for the overage in the following fishing year and may be subject to the overall groundfish AM provisions as specified in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

(iii) *Distribution of TACs*. For stocks managed by the U.S./Canada Resource Sharing Understanding, as specified in paragraph (a)(1) of this section, the TAC allocation determined pursuant to this paragraph (a)(2) shall be distributed between sectors approved pursuant to § 648.87(c), common pool vessels, scallop vessels, and other applicable fisheries, as specified in § 648.90(a)(4). Approved sectors will be allocated ACE for Eastern GB cod and Eastern GB haddock proportional to the sector's allocation of the overall ACL for these stocks, based upon the fishing histories of sector vessels, as specified in § 648.87(b)(1)(i). Any ACE for Eastern GB cod and Eastern GB haddock allocated to an individual sector is considered a subset of the overall GB cod and GB haddock ACE allocated to that sector and may only be harvested from the Eastern U.S./Canada Area, while the remaining ACE for GB cod and GB haddock available to that sector may only be harvested outside of the Eastern U.S./Canada Area. For example, if a sector is allocated 10 percent of the GB haddock ACL, it will also be allocated 10 percent of the Eastern GB haddock TAC for that particular fishing year.

(iv) *Inseason TAC Adjustments*. For FY 2014 only, the Regional Administrator, in consultation with the Council, may adjust the FY 2014 TACs for the U.S./Canada shared resources inseason consistent with any quota trade recommendations made by the TMGC and/or Steering Committee, and approved by the Regional Administrator. Any such inseason adjustment to the FY 2014 TACs may only increase the TAC available to the U.S. fishery, and may not reduce the TAC amount distributed in FY 2014 to any fishery component as specified in paragraph (a)(2)(iii) of this section. The revised FY 2014 TAC(s) shall be distributed consistent with the process specified in paragraph (a)(2)(iii) of this section. For example, if the U.S. receives additional yellowtail flounder TAC in FY 2014, and trades away a portion of its FY 2015 haddock TAC, the Regional Administrator would increase the FY 2014 U.S. TAC for yellowtail flounder inseason consistent with the process specified in this paragraph (a)(2)(iv). The adjustment to the FY 2015 U.S. TAC for haddock would be made as part of the process for establishing TACs, as described in paragraph (a)(2)(i)(C) of this section.

(3) *Requirements for vessels in U.S./Canada Management Areas*. Any common pool or sector vessel, provided the sector to which a vessel belongs is allocated ACE for stocks caught in the Eastern U.S./Canada Area pursuant to paragraph (a)(2)(iii) of this section and § 648.87(b)(1)(i), may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. A vessel other than a NE multispecies vessel may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section

and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies vessel fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(ii) *Declaration.* To fish in the U.S./Canada Management Area under a NE multispecies DAS or on a sector trip, a NE multispecies vessel must declare through the VMS the specific area within the U.S./Canada Management Areas, as described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP within the U.S./Canada Management Areas, as described in paragraph (b) of this section, the vessel will be fishing in prior to leaving the dock, in accordance with instructions to be provided by the Regional Administrator, and must comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies vessels are not required to declare into the U.S./Canada Management Areas.

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section. When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod and haddock caught on that trip will be apportioned by area fished, as determined by all available data sources, and those portions of the catch taken inside the Eastern U.S./Canada Area shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area, as instructed by the Regional Administrator. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS and vessels on a sector trip that are not fishing under a NE multispecies DAS for the purposes of complying with the restrictions of other fisheries, once a vessel elects to fish outside of the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS Demarcation Line at the start of its fishing trip until the time the vessel crosses the VMS Demarcation Line on its return to port, in accordance with § 648.10(e)(5)(iii).

(*2*) Unless otherwise exempted pursuant to this part, the vessel must comply with the reporting requirements of the U.S./Canada Management Area specified in § 648.85(a)(3)(v) for the duration of the trip.

(*3*) [Reserved]

(*4*) If a common pool vessel fishing under a NE multispecies DAS possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

(B) A common pool vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(*4*) of this section), and the reporting requirements specified in § 648.85(a)(3)(v). A vessel on a sector trip in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive reporting requirements specified in § 648.85(a)(3)(v), unless otherwise exempted pursuant to this part.

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 48 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* A NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (8) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*1*) of this section, or a haddock separator trawl, or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Unless otherwise restricted by § 648.80(n), gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net, or gear authorized under paragraphs (b)(6) and (8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed and not available for immediate use as defined in § 648.2. The description of the haddock separator trawl and the flounder trawl net, and the description of the Ruhle trawl may be further specified by the Regional Administrator through publication of such specifications in the FEDERAL REGISTER, in a manner consistent with the Administrative Procedure Act.

(A) *Haddock Separator Trawl.* A haddock separator trawl is defined as a groundfish trawl modified to a vertically-oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large-mesh separating panel constructed with a minimum of 6.0-inch (15.2-cm) diamond mesh must be installed between the selvedges joining the upper and lower panels, as described in paragraphs (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle. The horizontal large-mesh separating panel must be constructed with mesh of a contrasting color to the upper and bottom extensions of the net that it separates.

(*1*) *Two-seam bottom trawl nets.* For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80–85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes wide.

(*2*) *Four-seam bottom trawl nets.* For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(*1*) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end.

(*2*) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from selvedge to selvedge, composed of at least 12–in (30.5–cm) mesh that is inserted no farther than 4.5 meshes behind the headrope.

(iv) *Harvest controls.* Unless otherwise specified in this paragraph (a)(3)(iv), any NE multispecies vessel fishing in the U.S./Canada Management Areas is subject to the following restrictions. For common pool vessels, the trip limits specified in this paragraph (a)(3)(iv) are in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas. A sector vessel is subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs, as required under this section.

(*1*) *Initial cod landing limit.* Unless modified pursuant to paragraph (a)(3)(iv)(D) of this section, notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs, as required under this section.

(*2*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies DAS and sector vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, by prohibiting such vessels and all other vessels not issued a limited access NE multispecies permit from entering or being in this area and from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area during the closure period.

(B) *Haddock landing limit—*(*1*) *Initial haddock landing limit.* The initial haddock landing limit for common pool vessels is specified in § 648.86(a), unless adjusted pursuant to paragraphs (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the haddock TAC allocation specified for common pool vessels, as described in paragraph (a)(2) of this section, will be harvested, NMFS shall implement, in a manner consistent with the Administrative Procedure Act, a haddock trip limit for common pool vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock distributed to either common pool vessels or a particular sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit—*(*1*) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraphs (a)(3)(iv)(C)(*2*) or (D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D) of this section, there is no initial limit to the amount of yellowtail flounder that could be landed for each fishing year.

(*2*) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail

flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC, or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the entire U.S./Canada Management Area or to only the Western or Eastern Area.

(*3*) *Possession restriction when 100 percent of TAC is harvested*. When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder distributed to either common pool vessels or a particular sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(*4*) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip*. A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

(D) *Other restrictions or inseason adjustments*. In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or to facilitate achieving the TAC specified in paragraph (a)(2) of this section. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

(E) *Closure of Eastern U.S./Canada Area*. Based upon available information, when the Regional Administrator projects that any individual TAC allocation for NE multispecies common pool or sectors specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern

U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (i.e., haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a sector trip may only fish in a SAP if that vessel's sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed and not available for immediate use as defined in § 648.2, unless otherwise restricted under this part.

(v) *Reporting*. (A) The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The owner or operator of a sector vessel must submit daily reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into the Eastern U.S./Canada Area. Vessels subject to the daily reporting requirement must report daily for the entire fishing trip, regardless of what areas are fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(*1*) VTR serial number or other universal ID specified by the Regional Administrator;

(*2*) Date fish were caught and statistical area in which fish were caught; and

(*3*) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each statistical area, as instructed by the Regional Administrator.

(B) The Regional Administrator may remove or modify the reporting requirement for sector vessels in § 648.85(a)(3)(v) in a manner consistent with the Administrative Procedure Act.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding*. At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(vii) *Transiting*. A NE multispecies vessel that has declared into the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, and that is not fishing in the CA II Yellowtail Flounder/Haddock SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) *Special Access Programs*. A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest

level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies*. A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies*. A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder/Haddock SAP*—(i) *Eligibility*. Any vessel issued a valid limited access NE multispecies permit fishing under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks that may be caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), are eligible to participate in the Closed Area II Yellowtail Flounder/Haddock SAP, and may fish in the Closed Area II Yellowtail Flounder/Haddock Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, provided the Eastern U.S./Canada Area, as described in paragraph (a)(1)(ii) of this section, is not closed according to the provisions specified in paragraph (a)(3)(iv)(E) of this section, or that the sector to which a vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i). All eligible vessels must comply with the requirements of this section, unless otherwise specified in this paragraph (b)(3).

(ii) *Closed Area II Yellowtail Flounder/Haddock SAP Area*. The Closed Area II Yellowtail Flounder/Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER/HADDOCK SAP AREA

Point	N. latitude	W. longitude
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′1
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

(iii) *Season*—(A) *Season when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder*. When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the Closed Area II Yellowtail Flounder/Haddock SAP from July 1 through December 31.

(B) *Season when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock*. When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the CA II Yellowtail Flounder/Haddock SAP from August 1 through January 31.

(iv) *VMS requirement*. All NE multispecies vessels fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time and port of departure; and special access program to be fished, at least 48 hr prior to the beginning of any trip that it declares into the SAP as required under this paragraph (b)(3)(v). To fish in the Closed Area II Yellowtail Flounder/Haddock SAP, a vessel must declare into this area through the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Closed Area II Yellowtail Flounder/Haddock SAP may also fish in the area outside the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this

section, on the same trip, provided the vessel also declares into this area prior to departure from port and fishes under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished during the entire trip.

(vi) *Number of trips per vessel*—(A) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder*. When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible common pool vessels are restricted to one trip per calendar month during the season described in paragraph (b)(3)(iii) of this section.

(B) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock*. When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, there is no limit on the number of trips that can be taken by eligible vessels during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Opening criteria*—(A) *Opening the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder*. Unless otherwise authorized by the Regional Administrator, as specified in paragraph (a)(3)(iv)(D) of this section, the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP for each fishing year shall be as announced by the Regional Administrator on or about June 1, after consultation with the Council, in a manner consistent with the Administrative Procedure Act. Except as provided in paragraph (b)(3)(vii)(B) of this section, the total number of trips by all common pool vessels that may be declared into this SAP when the SAP is open to target yellowtail flounder shall not exceed 320 per year. When determining the total number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, the expected number of SAP participants, and any other available information. If the Regional Administrator determines that the available catch, as determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC allocation specified in paragraph (a)(2) of this section, is insufficient to allow for at least 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP during a fishing year.

(B) *Opening the CA II Yellowtail/Haddock SAP to only target haddock*. If the CA II Yellowtail Flounder/Haddock SAP is not open to targeting yellowtail flounder due to an insufficient amount of yellowtail flounder TAC, or because the maximum number of trips allowed into the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder has been achieved pursuant to paragraph (b)(3)(vii)(A) of this section, eligible vessels may target haddock in the CA II Yellowtail Flounder/Haddock Access Area, as specified in paragraph (b)(3)(ii) of this section, provided the Eastern GB haddock TAC specified in paragraph (a)(2) of this section has not been caught, the Eastern U.S./Canada Area is not closed pursuant to paragraph (a)(3)(iv)(D) of this section; and, for vessels on a sector trip, the sector to which the sector vessel belongs has ACE remaining for the stocks caught in the Eastern U.S./Canada Area.

(viii) *Trip limits*. Vessels subject to the provisions of the common pool that are fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the following trip limits, unless otherwise restricted in this part. Vessels subject to the restrictions and conditions of an approved sector operations plan fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Yellowtail flounder trip limit*—(*1*) *Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder*. Unless otherwise authorized by the Regional Administrator as specified in paragraph

(a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, a vessel subject to the provisions of the common pool that is fishing in the CA II Yellowtail Flounder/Haddock SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(*2*) *Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target haddock*. Unless otherwise specified by the Regional Administrator pursuant to paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is only open to target haddock, as specified in paragraph (b)(3)(vii) of this section, the trip limit for yellowtail flounder is specified in paragraph (b)(3)(viii)(C) of this section.

(B) *Cod and haddock trip limit*. Unless otherwise restricted, a common pool vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder/Haddock SAP on a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A common pool vessel fishing on a NE multispecies DAS in the Closed Area II Yellowtail Flounder/Haddock SAP is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(C) *Other species trip limits*. A common pool vessel fishing on a NE multispecies DAS in the CA II Yellowtail Flounder/Haddock SAP using a haddock separator trawl, a Ruhle trawl, or any other gear specified pursuant to paragraph (b)(3)(x)(B) must comply with the trip limits specified in § 648.86, unless further restricted by the trip limits specified in paragraph (e) of this section.

(ix) *Area fished*. Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder/Haddock SAP, and other areas as specified in paragraph (b)(3)(v) of this section, may not fish for, possess, or land fish in or from outside of the declared area during the same trip.

(x) *Gear requirements*—(A) *Approved gear*. When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, NE multispecies vessels fishing with trawl gear must use a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section, or the Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*3*) of this section (all three nets may be onboard the fishing vessel simultaneously). When this SAP is only open to target haddock, NE multispecies vessels must use a haddock separator trawl, a Ruhle trawl, or hook gear. Gear other than the haddock separator trawl, the flounder trawl, or the Ruhle trawl may be on board the vessel during a trip to the Eastern U.S./Canada Area outside of the CA II Yellowtail Flounder/Haddock SAP, provided the gear is stowed and not available for immediate use as defined in § 648.2.

(B) *Approval of additional gear*. The Regional Administrator may authorize additional gear for use in the CA II Yellowtail Flounder/Haddock SAP in accordance with the standards and requirements specified in paragraph (b)(6)(iv)(J)(*2*) of this section.

(xi) *No-discard provision and DAS flips*. A vessel fishing in the CA II Yellowtail Flounder/Haddock SAP under a NE multispecies DAS or on a sector trip may not discard legal-sized regulated NE multispecies, unless the possession of the species is prohibited pursuant to § 648.86, or unless otherwise specified in this paragraph (b)(3)(xi). A vessel may discard Atlantic halibut exceeding the one fish per trip possession limit. If a vessel fishing in the CA II Yellowtail Flounder/Haddock SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a common pool vessel operator fishing in the CA II Yellowtail Flounder/Haddock SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies or Atlantic halibut than the maximum landing limits allowed per trip, as specified in paragraph (b)(3)(iv) or (viii) of this section, or in

§ 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Category B DAS.

(xii) *Minimum Category A DAS*. For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(xiii) *Catch distribution*. All catch of GB haddock from vessels declared into the CA II Yellowtail Flounder/Haddock SAP shall be applied against the Eastern GB haddock TAC, as specified in paragraph (a)(2) of this section, for either common pool vessels or individual approved sectors.

(4) [Reserved]

(5) *Incidental Catch TACs*. Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, CC/GOM yellowtail flounder, American plaice, SNE/MA winter flounder, and witch flounder. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod and GB yellowtail flounder*. With the exception of GB cod and GB yellowtail flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod*. The Incidental Catch TAC for GB cod specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder*. The Incidental Catch TAC for GB yellowtail flounder specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section and 50 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) *Regular B DAS Pilot Program*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Program, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may fish under the B Regular DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip.

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs*. The Incidental Catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs as follows: The first quarter shall receive 13 percent of the Incidental Catch TACs and the remaining quarters shall each receive 29 percent of the Incidental Catch TACs. NMFS shall send letters to all limited

access NE multispecies permit holders notifying them of such TACs.

(iv) *Program requirements*—(A) *VMS requirement*. A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 48 hr prior to the beginning of any trip declared into the Regular B DAS Program as required by paragraph (b)(6)(iv)(C) of this section, and in accordance with the Regional Administrator's instructions. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity on that trip to that area only (*i.e.*, the vessel operator may change his/her plans regarding planned fishing areas).

(C) *VMS declaration*. To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits*. Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, witch flounder, SNE/MA winter flounder, and GB yellowtail flounder; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A) of this section, or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(J) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

(E) *No-discard provision and DAS flips*. A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species or ocean pout is prohibited, as specified in §§ 648.85 and 648.86. If such a vessel harvests and brings on board legal-sized regulated species or ocean pout in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified in § 648.85(a) or § 648.86 and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual*. For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at

the start of the trip. If a vessel is fishing in an area subject to differential DAS counting pursuant to § 648.82(n)(1), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by the applicable differential DAS counting factor specified in § 648.82(n)(1)(ii). For example, if a vessel plans a trip under the Regular B DAS Program in the Inshore GOM Differential DAS Area during a fishing year in which the area is subject to a differential DAS counting factor of 1.2, and the vessel has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 8 (10 divided by 1.2 = 8.33, but since Regular B DAS are charged in 24-hr intervals, 8 Regular B DAS is the maximum that can be used for this trip). A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(1).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* With the exception of white hake, when the Regional Administrator provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of quarterly incidental TACs specified under paragraph (b)(6)(iii) of this section has projected to have been harvested, the use of Regular B DAS shall be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the quarterly incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the quarterly white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May–July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(1).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each statistical area (in pounds, live weight), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described in paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement.* (*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or Ruhle trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear if approved as described in this paragraph (b)(6)(iv)(J). When the vessel is fishing under the Regular B DAS Program other gear may be on board provided it is stowed and not available for immediate use as defined in § 648.2.

(*2*) *Approval of additional gear.* At the request of the Council or the Council's

Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(*2*)(*i*) or (*ii*) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(*2*) will be made to an appropriately selected control gear.

(*i*) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*i*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(*ii*) The catch of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(*2*)(*ii*), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

(*3*) *Ruhle Trawl*. The Ruhle Trawl is a four-seam bottom groundfish trawl designed to reduce the bycatch of cod while retaining or increasing the catch of haddock, when compared to traditional groundfish trawls. A Ruhle Trawl must be constructed in accordance with the standards described and referenced in this paragraph § 648.85(b)(6)(iv)(J)(*3*). The mesh size of a particular section of the Ruhle Trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (× 2), top wing, bottom wing, wing side panels (× 2), bunt, square, square side panels (× 2), first top belly, first bottom belly, first belly side panels (× 2), and second bottom belly.

(*ii*) The top and bottom jibs, jib side panels, top and bottom wings, and wing side panels, bunt, and first bottom belly (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first top belly, and first belly side panels must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the first top belly and second bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have at least 15 meshes (240 cm each) at the wide end of the first bottom belly, excluding the gore.

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 19.3 sq. ft. (1.8 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible, used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

(*4*) *Mesh size*. An eligible vessel fishing in the Regular B DAS Program within the GB Cod Stock Area as defined in paragraph (b)(6)(v)(B) of this section pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(v) *Definition of stock areas*. The species stock areas associated with the incidental catch TACs for the Regular B DAS Program are defined in paragraphs (b)(6)(v)(A) through (K) of this section. Where specified, these areas also identify stock areas applicable for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of ACE pursuant to § 648.87(b). Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area*. The GOM cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM COD STOCK AREA

Point	N. latitude	W. longitude
GOM1	(1)	70°00′
GOM2	42°20′	70°00′
GOM3	42°20′	67°40′
GOM4	(2)	67°40′
GOM5	(3)	67°40′
GOM6	43°50′	67°40′
GOM7	43°50′	(4)
GOM8	(4)	67°00′
GOM9	(5)	67°00′

1 Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
2 U.S./Canada maritime boundary (southern intersection with 67°40′ W. long.).
3 U.S./Canada maritime boundary (northern intersection with 67°40′ W. long.).
4 U.S./Canada maritime boundary.
5 Intersection of the south-facing ME coastline and 67°00′ W. long.

(B) *GB cod stock area*. The GB cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GB COD STOCK AREA

Point	N. latitude	W. longitude
GB1	(1)	70°00′
GB2	42°20′	70°00′
GB3	42°20′	(2)
GB4	35°00′	(2)
GB5	35°00′	(3)

1 Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
2 U.S./Canada maritime boundary.
3 Intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(C) *CC/GOM yellowtail flounder stock area*. For the purposes of the Regular B DAS Program, the CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
CCGOM 1	43°00′	(1)
CCGOM 2	43°00′	70°00′
CCGOM 3	42°30′	70°00′
CCGOM 4	42°30′	69°30′
CCGOM 5	41°30′	69°30′
CCGOM 6	41°30′	69°00′
CCGOM 7	41°00′	69°00′
CCGOM 8	41°00′	69°30′
CCGOM 5	41°30′	69°30′
CCGOM 9	41°30′	70°00′
CCGOM 10	(2)	70°00′
CCGOM 11	42°00′	70°00′
CCGOM 12	42°00′	(3)
CCGOM 13	42°00′	(4)
CCGOM 14	42°00′	(5)

1 Intersection with the NH coastline.
2 Intersection of the south-facing shoreline of Cape Cod, MA.
3 Intersection with the east-facing shoreline of Cape Cod, MA.
4 Intersection with the west-facing shoreline of Cape Cod, MA.
5 Intersection with the east-facing shoreline of Massachusetts.

(D) *American plaice stock area*. The American plaice stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. latitude	W. longitude
AMP1	(1)	67°00′
AMP2	(2)	67°00′
AMP3	43°50′	(2)
AMP4	43°50′	67°40′
AMP5	(3)	67°40′

AMERICAN PLAICE STOCK AREA—Continued

Point	N. latitude	W. longitude
AMP6	(4)	67°40′
AMP7	42°30′	67°40′
AMP8	42°30′	(2)
AMP9	35°00′	(2)
AMP10	35°00′	(5)

[1] Intersection of south-facing ME coastline and 67°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
[4] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
[5] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(E) *SNE/MA yellowtail flounder stock area*. For the purposes of the Regular B DAS Program, the SNE/MA stock area is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNEMA1	40°00′	74°00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°10′	69°30′
SNEMA6	41°10′	69°50′
SNEMA7	41°20′	69°50′
SNEMA8	41°20′	(1)
SNEMA9	(2)	70°00′
SNEMA10	41°00′	70°00′
SNEMA11	41°00′	70°30′
SNEMA12	(3)	70°30′
SNEMA13	(4)	72°00′
SNEMA14	(5)	72°00′
SNEMA15	(6)	73°00′
SNEMA16	40°30′	73°00′
SNEMA17	40°30′	74°00′
SNEMA1	40°00′	74°00′

[1] East-facing shoreline of Nantucket, MA.
[2] South-facing shoreline of Nantucket, MA.
[3] Intersection of the south-facing shoreline of Cape Cod, MA.
[4] South-facing shoreline of CT.
[5] North-facing shoreline of Long Island, NY.
[6] South-facing shoreline of Long Island, NY.

(F) *SNE/MA winter flounder stock area*. The SNE winter flounder stock area, for the purposes of the Regular B DAS Program and identifying stock areas for trip limits specified in §§ 648.86 and 648.89 is the area defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	68°50′

SNE/MA WINTER FLOUNDER STOCK AREA—Continued

Point	N. latitude	W. longitude
4	39°50′	68°50′
5	39°50′	69°00′
6	39°00′	69°00′
7	39°00′	(2)
8	35°00′	(2)
9	35°00′	(3)

[1] Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] The intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(G) *Witch flounder stock area*. The witch flounder stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00′ N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(H) *GB yellowtail flounder stock area*. The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
USCA1	42°20′	68°50′
USCA16	42°20′	(1)
USCA5	39°00′	(1)
USCA17	39°00′	69°00′
USCA18	39°50′	69°00′
USCA2	39°50′	68°50′
USCA1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(I) *GB winter flounder stock area*. The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
USCA1	42°20′	68°50′
USCA16	42°20′	(1)
USCA5	39°00′	(1)
USCA17	39°00′	69°00′
USCA18	39°50′	69°00′
USCA2	39°50′	68°50′
USCA1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(J) *White hake stock area*. The white hake stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00′ N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(K) *Pollock stock area*. The pollock stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

POLLOCK STOCK AREA

Point	N. latitude	W. longitude
P1	(1)	67°00′
P2	(2)	67°00′
P3	43°50′	(2)
P4	43°50′	67°40′
P5	(3)	67°40′
P6	(4)	67°40′
P7	42°30′	67°40′
P8	42°30′	(2)
P9	35°00′	(2)
P10	35°00′	(5)

[1] Intersection of south-facing ME coastline and 67°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
[4] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.).
[5] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(vi) *Closure of the Regular B DAS Program*. The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, in a manner consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) *CA I Hook Gear Haddock SAP*—(i) *Eligibility*. A vessel issued a valid limited access NE multispecies permit operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the CA I Hook Gear Haddock SAP and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided any such vessel complies with the requirements of this section, the SAP is not closed according to the provisions specified in paragraph (b)(7)(iv)(H) or (b)(7)(vi)(F) of this section, or the sector in which the vessel is participating no longer has ACE available for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i). Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock SAP Area*. The CA I Hook Gear Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CA I HOOK GEAR HADDOCK SAP AREA

Point	N. latitude	W. longitude
Hook 1	41°09′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′
Hook 2	41°04′	69°01.1′

(iii) *Season*. The season for the CA I Hook Gear Haddock SAP is May 1 through January 31.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels, as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to sector and common pool vessels are specified in paragraphs (b)(7)(v) and (vi) of this section, respectively.

(A) *DAS use restrictions.* A vessel fishing in the Closed Area I Hook Gear Haddock SAP under a NE multispecies DAS may not initiate a DAS flip. A vessel is prohibited from fishing in the Closed Area I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described in paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *VMS requirement.* An eligible NE multispecies vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 48 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* To fish in the CA I Hook Gear Haddock SAP prior to departure from port, a vessel must declare into the SAP via VMS, and, for a vessel fishing under a NE multispecies DAS, indicate the type of DAS that it intends to fish, prior to departure from port, as instructed by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP may fish only in the CA I Hook Gear Haddock Special Access Area described in paragraph (b)(7)(ii) of this section on a declared trip.

(E) *Gear restrictions.* A vessel declared into, and fishing in, the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified in paragraphs (b)(7)(v)(A) and (vi)(B) of this section.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: BiomassYEAR X = (1,130 mt live weight) × (Projected WGB Haddock ExploitableBiomassYEAR X/ WGB Haddock Exploitable Biomass2004). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP. A vessel operating under a NE multispecies DAS must end the trip if the vessel exceeds the applicable landing limits described in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section.

(H) *Landing limits.* For all vessels legally declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies are specified in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section, respectively. Unless otherwise restricted by § 648.86, such vessels are prohibited from discarding legal-sized regulated species and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the CA I Hook

Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels, including both common pool and sector vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a sector vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(v).

(A) *Gear restrictions.* A sector vessel is subject to the gear requirements of the sector Operations Plan as approved under § 648.87(c) and those specified under paragraph (b)(7)(iv)(E) of this section.

(B) *Landing limits.* A sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the landing limits for regulated species in effect under the sector's Operations Plan, as approved under § 648.87(c).

(C) *Reporting requirements.* The owner or operator of a sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the sector Manager, consistent with instructions to be provided by the sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake discarded; date fish were caught; and VTR serial numbers for each trip declared into the CA I Hook Gear Haddock SAP, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) or (H) of this section.

(D) *Incidental catch TACs.* There are no incidental catch TACs specified for regulated species or ocean pout for sector vessels declared into the CA I Hook Gear Haddock SAP. All regulated species or ocean pout caught by sector vessels fishing in the SAP count toward the sector's annual ACE for each stock, as specified in § 648.87(b)(1)(i).

(vi) *Common pool vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a common pool vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(vi).

(A) *DAS use restrictions.* A common pool vessel may only use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A common pool vessel is prohibited from using Category A DAS and may not initiate a DAS flip when declared into the SAP. A common pool vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *Gear restrictions.* A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

(C) *Landing limits.* A common pool vessel may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A common pool vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2359 hr local time. The reports must be submitted by 0900 hr local time of the day

following fishing. The reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each statistical area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

(E) *Incidental catch TACs*. The maximum amount of GB cod and pollock (landings and discards) that may be cumulatively caught by a common pool vessel from the CA I Hook Gear Haddock SAP Area in a fishing year is the amount specified in paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of any incidental catch TAC*. When the Regional Administrator determines that either the GB cod or pollock incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, the CA I Hook Gear Haddock SAP Area shall be closed to all common pool vessels in a manner consistent with the Administrative Procedure Act.

(8) *Eastern U.S./Canada Haddock SAP*—(i) *Eligibility*. A vessel issued a valid limited access NE multispecies permit and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section while operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the Eastern U.S./Canada Haddock SAP and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section and provided the SAP is not closed according to the provisions specified in paragraph (b)(8)(v)(K) or (L) of this section, the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section, or the sector to which the vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i).

(ii) *Eastern U.S./Canada Haddock SAP Area*. The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3	42° 22′	67° 20′ [1]
SAP1	42° 20′	67° 20′
SAP2	42° 20′	67° 40′
SAP3	41° 10′	67° 40′
SAP4	41° 10′	67° 20′
SAP5	42° 10′	67° 20′
SAP6	42° 10′	67° 10′
CAII3	42° 22′	67° 20′ [1]

[1] U.S./Canada maritime boundary.

(iii) [Reserved]

(iv) *Season*. An eligible vessel may fish in the Eastern U.S./Canada Haddock SAP from August 1 through December 31.

(v) *Program restrictions*—(A) *Area and DAS use restrictions*. A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS in accordance with § 648.82(d)(2), or in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP may elect to fish in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A).

(*1*) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder/Haddock SAP Area, as described in paragraph

(b)(3)(ii) of this section, and, for common pool vessels fishing a NE multispecies DAS, while under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder/Haddock SAP Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided a common pool vessel fishes under a Category A DAS and all eligible vessels comply with the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) A common pool vessel fishing under a NE multispecies DAS that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements of the areas fished for the entire trip. A vessel on a sector trip that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must comply with the most restrictive reporting requirements of the areas fished for the entire trip, unless otherwise specified by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(B) *VMS requirement*. A vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications*. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 48 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration*. To fish in the Eastern U.S./Canada Haddock SAP, a vessel issued a limited access NE multispecies permit must declare into the SAP via VMS and provide information on the areas within the Eastern U.S./Canada Area that it intends to fish and the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, if operating under the provisions of the common pool, prior to departure from port, in accordance with paragraph (b)(8)(v)(A) of this section and any instructions provided by the Regional Administrator.

(E) *Gear requirement*—(*1*) Unless otherwise specified in this paragraph (b)(8)(v)(E)(1), a vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or the Ruhle Trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or another type of gear, if approved as described in this paragraph (b)(8)(v)(E). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP is not restricted to only using the haddock separator trawl or the Ruhle trawl, but may use any gear authorized in paragraph (a)(3)(iii) of this section, unless otherwise restricted by a sector operations plan approved pursuant to § 648.87(c). Other gear may be on board the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, provided that the gear is stowed and not available for immediate use as defined in § 648.2.

(*2*) *Approval of additional gear*. The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(*2*).

(F) *Landing limits*. Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of

trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited. Possession limits for all other stocks are as specified in § 648.86.

(G) *Reporting requirements*. The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental TACs*. The maximum amount of GB cod and GB yellowtail flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a sector trip will be applied against the ACE for each stock that is specified for the sector in which the vessel participates.

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated or ocean pout unless otherwise required due to a prohibition of the possession of such species specified in this part. If a common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified in paragraph (b)(8)(v)(F) of this section, or in § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified in § 648.85(a) or § 648.86. If a common pool vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified in paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined in paragraph (b)(8)(ii) of this section for the remainder of the trip. For a common pool vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS pursuant to § 648.82(e)(1), and not Category B DAS.

(J) *Minimum Category A DAS*. To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP*. When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP, through publication in the FEDERAL REGISTER consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area*. The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

(c) *Scallop fishery closed area access program.* Limited access scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(ii), unless otherwise restricted in this section.

(d) *Authorized gear performance standards.* Unless otherwise restricted in this part, in areas and times when a special management program, as specified in this section, requires the use of gear authorized by that program to reduce catches of stocks of concern, participating vessels are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

[69 FR 22975, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.85, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.86 NE Multispecies possession restrictions.

Except as provided in § 648.17 or elsewhere in this part, the following possession restrictions apply:

(a) *Haddock*—(1) *NE multispecies common pool vessels.* Haddock possession restrictions for such vessels may be implemented through Regional Administrator authority, as specified in paragraph (r) of this section.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels also issued limited access NE multispecies permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3)(i) *Incidental catch allowance for some Atlantic herring vessels.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may only possess and land haddock, in accordance with requirements specified in § 648.80(d) and (e).

(ii) *Haddock incidental catch cap.* (A)(*1*) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.90(a)(4)(iii)(D),has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(*2*) and (*3*) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel's gear is stowed and not available for immediate use as defined in § 648.2 while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit

fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

(*2*) *Herring GOM Haddock Accountability Measure Area*. The Herring GOM Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GOM HADDOCK ACCOUNTABILITY MEASURE AREA

Point	N. latitude	W. longitude
HGA1	(1)	69°20′
HGA	43°40′	69°20′
HGA3	43°40′	69°00′
HGA4	43°20′	69°00′
HGA5	43°20′	(2)
HGA6	42°20′	(3)
HGA7	42°20′	70°00′
HGA8	(4)	70°00′

[1] The intersection of the Maine coastline and 69°20′ W. long.
[2] The intersection of the U.S./Canada maritime boundary and 43°20′ N. lat.
[3] The intersection of the U.S./Canada maritime boundary and 42°20′ N. lat.
[4] The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00′ W. long.

(*3*) *The Herring GB Haddock Accountability Measure Area*. The Herring GB Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GB HADDOCK ACCOUNTABILITY MEASURE AREA

Point	N. Latitude	W. Longitude
1	42° 20′	70° 00′
2	42° 20′	(1)
3	40° 30′	(1)
4	40° 30′	66° 40′
5	39° 50′	66° 40′
6	39° 50′	68° 50′

HERRING GB HADDOCK ACCOUNTABILITY MEASURE AREA—Continued

Point	N. Latitude	W. Longitude
7	(2)	68° 50′
8	41° 00′	(3)
9	41° 00′	69° 30′
10	41° 10′	69° 30′
11	41° 10′	69° 50′
12	41° 20′	69° 50′
13	41° 20′	(4)
14	(5)	70° 00′
15	(6)	70° 00′
16	(7)	70° 00′

[1] The intersection of the U.S./Canada maritime boundary.
[2] The intersection of the boundary of Closed Area I and 68° 50′ W. long.
[3] The intersection of the boundary of Closed Area I and 41° 00′ N. lat.
[4] The intersection of the east-facing shoreline of Nantucket, MA, and 41° 20′ N. lat.
[5] The intersection of the north-facing shoreline of Nantucket, MA, and 70° 00′ W. long.
[6] The intersection of the south-facing shoreline of Cape Cod, MA, and 70° 00′ W. long.
[7] The intersection of the north-facing shoreline of Cape Cod, MA, and 70° 00′ W. long.

(*4*) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1–April 30), which differs from the herring fishing year (January 1–December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.90(a)(4)(iii)(D), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(*2*) or (*3*) of this section, shall be in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011–April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012–April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

(B) [Reserved]

(b) *Cod*—(1) *GOM cod landing limit*. Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit

provisions, may land up to 800 lb (362.9 kg) of cod for each DAS, or part of a DAS, up to 4,000 lb (1,818.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *GB cod landing and maximum possession limits.* Unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod per DAS, or part of a DAS, up to 20,000 lb (9,072 kg) provided it complies with the requirements specified in paragraph (b)(4) of this section and this paragraph (b)(2). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) [Reserved]

(4) *Exemption.* A common pool vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the GOM Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of a vessel declared into the U.S./Canada Management Area, as described in § 648.85(a)(3)(ii), a common pool vessel that fishes or intends to fish under a NE multispecies DAS south of the line described in paragraph (b)(4) of this section, under the cod trip limits described in paragraph (b)(2) of this section, must, prior to leaving port, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the letter of authorization on board.

(ii) A common pool vessel exempt from the GOM cod landing limit pursuant to paragraph (b)(4)(i) of this section may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed and not available for immediate use as defined in § 648.2. A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part, unless otherwise specified in § 648.90(a)(5)(i)(D)(*2*).

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 in (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake, if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than*

2.5 in (6.35 cm) but less than 3 in (7.62 cm). An owner or operator of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 in (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake when fishing in the GOM or GB Exemption Areas, as described in § 648.80(a), and not more than 40,000 lb (18,144 kg) of combined silver hake and offshore hake when fishing in the SNE or MA Exemption Areas, as described in § 648.80(b)(10) and (c)(5), respectively, if both of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). ''Incorporated into a fully constructed net'' means that any mesh smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i) through (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft by 3 ft (0.9 m by 0.9 m), (9 sq ft (0.81 sq m)).

(v) [Reserved]

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives.

This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(4) *Accountability Measure In-season adjustment of small-mesh multispecies possession limits*. If the Regional Administrator projects that an in-season adjustment TAL trigger level for any small-mesh multispecies stock, as specified in § 648.90(b)(5)(iii), has been reached or exceeded, the Regional Administrator shall reduce the possession limit of that stock to the incidental level for that stock, as specified in this paragraph (d)(4), for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(i) *Red hake*. If a possession limit reduction is needed for a stock area, the incidental possession limit for red hake in that stock area will be 400 lb (181.44 kg) for the remainder of the fishing year.

(ii) *Silver hake and offshore hake*. If a possession limit reduction is needed for a stock area, the incidental possession limit for silver hake and offshore hake, combined, in that stock area will be 2,000 lb (907 kg) for the remainder of the fishing year.

(e) *White hake*. Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions is not restricted in the amount of white hake the vessel may land per trip during fishing years 2010 and 2011. Starting in fishing year 2012, unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 2,000 lb (907.2 kg) per trip.

(f) *Calculation of weight of fillets or parts of fish*. The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit*. Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined in § 648.85(a)(1), may land or possess on board up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,500 lb (680.4 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB yellowtail flounder landing limit*. Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is subject to the GB yellowtail flounder limit described in paragraph § 648.85(a)(3)(iv)(c).

(h) *Other possession restrictions*. Vessels are subject to any other applicable possession limit restrictions of this part.

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit*. A vessel that has ended a trip as specified in § 648.10(e)(2)(iii) or (h)(5) that possesses on board species regulated by a daily possession limit (*i.e.*, pounds per DAS), as specified at § 648.85 or § 648.86, must offload species in excess of the daily landing limit prior to leaving port on a subsequent

trip. A vessel may retain on board up to one day's worth of such species prior to the start of a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested in excess of 1,000 lb (453 kg) (*i.e.,* the vessel may retain up to 1,000 lb (453 kg) of Georges Bank cod, but must offload any additional cod), but may retain on board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS Demarcation Line to begin a subsequent trip.

(j) *GB winter flounder.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is not restricted in the amount of GB winter flounder the vessel may land per trip.

(k) *Other regulated NE. multispecies possession restrictions for some Atlantic herring vessels.* A vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit on a declared herring trip, regardless of area fished or gear used, or a vessel issued a Limited Access Incidental Catch Herring Permit and/or an Open Access Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may possess and land haddock, and up to 100 lb (45 kg), combined, of other regulated NE. multispecies, other than haddock, in accordance with the requirements in § 648.80(d) and (e). Such fish may not be sold for human consumption.

(l) *Ocean pout, windowpane flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean pout, windowpane flounder, or Atlantic wolffish.

(m) *Additional possession restrictions*—(1) *Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period, based upon the time the vessel lands following the end of the previous trip. For example, if a vessel lands 1,600 lb (725.7 kg) of GOM cod at 6 p.m. on Tuesday, that vessel cannot land any more regulated species or ocean pout until at least 6 p.m. on the following Wednesday.

(2) *Possession limits for vessels fishing in multiple areas.* If a vessel fishes in more than one stock area on the same trip, as defined in § 648.85(b)(6)(v) or § 648.87(b)(1)(ii), the most restrictive trip limit for a species applies for the entire trip.

(n) *Pollock.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(o) *Regional Administrator authority to implement possession limits*—(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any

stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

[69 FR 22978, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.86, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.87 Sector allocation.

(a) *Procedure for approving/implementing a sector allocation proposal.* (1) Any person may submit a sector allocation proposal for a group of limited access NE multispecies vessels to NMFS. The sector allocation proposal must be submitted to the Council and NMFS in writing by the deadline for submitting an operations plan and preliminary sector contract that is specified in paragraph (b)(2) of this section. The proposal must include a cover letter requesting the formation of the new sector, a complete sector operations plan and preliminary sector contract, prepared as described in paragraphs (b)(2) and (b)(3) of this section, and appropriate analysis that assesses the impact of the proposed sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a proposal to form a new sector allocation, and following the deadline for each sector to submit an operations plan, as described in paragraph (b)(2) of this section, NMFS will notify the Council in writing of its intent to consider a new sector allocation for approval. The Council will review the proposal(s) and associated NEPA analyses at a Groundfish Committee and Council meeting, and provide its recommendation on the proposed sector allocation to NMFS in writing. NMFS will make final determinations regarding the approval of the new sectors based on review of the proposed operations plans, associated NEPA analyses, and the Council's recommendations, and in a manner consistent with the Administrative Procedure Act. NMFS will only approve a new sector that has received the Council's endorsement.

(3) *Eligibility.* Any valid limited access NE multispecies permit, including a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(J) as of May 1, 2008, is eligible to join a NE multispecies sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size.* To be authorized to operate as a sector under this section, a sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in that sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercises any control over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors.* (1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation*—(A) *Allocated stocks.* Each sector shall be allocated a

TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section.

(B) *Eastern GB stocks*—(*1*) *Allocation*. Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(*2*) *Re-allocation of haddock or cod ACE*. A sector may re-allocate all, or a portion, of its haddock or cod ACE specified to the Eastern U.S./Canada Area, pursuant to paragraph (b)(1)(i)(B)(*1*) of this section, to the Western U.S./Canada Area at any time during the fishing year, and up to 2 weeks into the following fishing year (*i.e.*, through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. Re-allocation of any ACE only becomes effective upon approval by NMFS, as specified in paragraphs (b)(1)(i)(B)(*2*)(*i*) through (*iii*) of this section. Re-allocation of haddock or cod ACE may only be made within a sector, and not between sectors. For example, if 100 mt of a sector's GB haddock ACE is specified to the Eastern U.S./Canada Area, the sector could re-allocate up to 100 mt of that ACE to the Western U.S./Canada Area.

(*i*) *Application to re-allocate ACE*. GB haddock or GB cod ACE specified to the Eastern U.S./Canada Area may be re-allocated to the Western U.S./Canada Area through written request to the Regional Administrator. This request must include the name of the sector, the amount of ACE to be re-allocated, and the fishing year in which the ACE re-allocation applies, as instructed by the Regional Administrator.

(*ii*) *Approval of request to re-allocate ACE*. NMFS shall approve or disapprove a request to re-allocate GB haddock or GB cod ACE provided the sector, and its participating vessels, are in compliance with the reporting requirements specified in this part. The Regional Administrator shall inform the sector in writing, within 2 weeks of the receipt of the sector's request, whether the request to re-allocate ACE has been approved.

(*iii*) *Duration of ACE re-allocation*. GB haddock or GB cod ACE that has been re-allocated to the Western U.S./Canada Area pursuant to this paragraph (b)(1)(i)(B)(*2*) is only valid for the fishing year in which the re-allocation is approved, with the exception of any requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(C) *Carryover*. (*1*) With the exception of GB yellowtail flounder, a sector may carryover an amount of ACE equal to 10 percent of its original ACE for each stock that is unused at the end of one fishing year into the following fishing year, provided that the total unused sector ACE plus the overall ACL for the following fishing year does not exceed the ABC for the fishing year in which the carryover may be harvested. If this total exceeds the ABC, NMFS

shall adjust the maximum amount of unused ACE that a sector may carryover (down from 10 percent) to an amount equal to the ABC of the following fishing year. Any adjustments made would be applied to each sector based on its total unused ACE and proportional to the cumulative PSCs of vessels/permits participating in the sector for the particular fishing year, as described in paragraph (b)(1)(i)(E) of this section.

(*i*) *Eastern GB Stocks Carryover*. Any unused ACE allocated for Eastern GB stocks in accordance with paragraph (b)(1)(i)(B) of this section shall contribute to the carryover allowance for each stock, as specified in this paragraph (b)(1)(i)(C)(*1*), but shall not increase individual sector's allocation of Eastern GB stocks during the following year.

(*ii*) This carryover ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(*2*) *Carryover accounting*. (*i*) If the overall ACL for a particular stock is exceeded, the allowed carryover of a particular stock harvested by a sector, minus the NMFS-specified *de minimis* amount, shall be counted against the sector's ACE for purposes of determining an overage subject to the AM in paragraph (b)(1)(iii) of this section.

(*ii*) *De Minimis Carryover Amount*. The *de minimis* carryover amount is one percent of the overall sector sub-ACL for the fishing year in which the carryover would be harvested. NMFS may change this *de minimis* carryover amount for any fishing year through notice consistent with the Administrative Procedure Act. The overall *de minimis* carryover amount would be applied to each sector proportional to the cumulative PSCs of vessels/permits participating in the sector for the particular fishing year, as described in paragraph (b)(1)(i)(E) of this section.

(D) *Maximum ACE allocation*. There is no maximum amount of ACE that can be allocated to a particular sector during each fishing year.

(E) *Potential sector contribution (PSC)*. For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(*1*) and (*2*) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). This calculation shall be performed on July 1 of each year, unless another date is specified by the Regional Administrator, to redistribute the landings history associated with permits that have been voluntarily relinquished or otherwise canceled among all remaining valid limited access NE multispecies permits as of that date during the following fishing year. The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(*1*) *Calculation of PSC for all NE multispecies stocks except GB cod*. Unless otherwise specified in paragraph (b)(1)(i)(E)(*2*) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This

sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(*1*).

(*2*) *Calculation of GB cod PSC*. The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(*2*) and shall remain with the permit indefinitely regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in § 648.87(d)(1) or (2), joins a new sector, or fishes pursuant to the provisions of the common pool.

(*i*) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector*. For each owner of a valid NE multispecies permit, or CPH, that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid authorized signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be equal to the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(*1*) of this section. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*i*) shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit for the following fishing year.

(*ii*) *GB cod PSC for all other permits*. For each owner of a valid NE multispecies permit or CPH that has not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (b)(1)(i)(E)(*2*)(*i*) of this section, the GB cod PSC for each such permit or CPH shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section. To determine the GB cod PSC for each of these permits, the sum of the individual permit's landings of GB cod available in the NMFS dealer database for fishing years 1996 through 2006 shall be divided by the total landings of GB cod during that period by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008. This individual share shall then be multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section from one. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*ii*) shall then be multiplied by a factor of 1/PSC of remaining permits as of July 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit.

(ii) *Areas that can be fished*. Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires, pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks allocated to sectors pursuant to paragraph (b)(1)(i)(A) of this section that are caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector

trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceeds the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

(A) *CC/GOM Yellowtail Flounder Stock Area*. The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by rhumb lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70° 00′
2	(2)	70° 00′
3	41° 20′	(3)
4	41° 20′	69° 50′
5	41° 10′	69° 50′
6	41° 10′	69° 30′
7	41° 00′	69° 30′
8	41° 00′	68° 50′
9	42° 20′	68° 50′
10	42° 20′	(4)

[1] Intersection of south-facing coastline of Cape Cod, MA, and 70° 00′ W. long.
[2] Intersection of north-facing coastline of Nantucket, MA, and 70° 00′ W. long.
[3] Intersection of east-facing coastline of Nantucket, MA, and 41° 20′ N. lat.
[4] U.S./Canada maritime boundary.

(B) *SNE/MA Yellowtail Flounder Stock Area*. The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by rhumb lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1	35° 00′	(1)
2	35° 00′	(2)
3	39° 00′	(2)
4	39° 00′	69° 00′
5	39° 50′	69° 00′
7	39° 50′	68° 50′
8	41° 00′	68° 50′
9	41° 00′	69° 30′
10	41° 10′	69° 30′
11	41° 10′	69° 50′
12	41° 20′	69° 50′
13	41° 20′	(3)
14	(4)	70° 00′
15	(5)	70° 00′

[1] Intersection of east-facing coastline of Outer Banks, NC, and 35° 00′ N. lat.
[2] U.S./Canada maritime boundary.
[3] Intersection of east-facing coastline of Nantucket, MA, and 41° 20′ N. lat.
[4] Intersection of north-facing coastline of Nantucket, MA, and 70° 00′ W. long.
[5] Intersection of south-facing coastline of Cape Cod, MA, and 70° 00′ W. long.

(C) *GOM Haddock Stock Area*. The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM HADDOCK STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70° 00′
2	42° 20′	70° 00′
3	42° 20′	67° 40′
4	(2)	67° 40′
5	(3)	67° 40′
6	43° 50′	67° 40′
7	43° 50′	(4)
8	(4)	67° 00′
9	(5)	67° 00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. long.
[2] U.S./Canada maritime boundary southern intersection with 67° 40′ W. long.).
[3] U.S./Canada maritime boundary northern intersection with 67° 40′ W. long.).
[4] U.S./Canada maritime boundary.
[5] Intersection of the south-facing ME coastline and 67° 00′ W. long.

(D) *GB Haddock Stock Area*. The GB Haddock Stock Area, for the purposes

of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United States, on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

GB HADDOCK STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70° 00′
2	42° 20′	70° 00′
3	42° 20′	(2)

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00′ W. long.
[2] U.S./Canada maritime boundary.

(E) *Redfish Stock Area.* The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a rhumb line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	67°40′
4	(2)	67°40′
5	(3)	67°40′
6	43°50′	67°40′

GOM WINTER FLOUNDER STOCK AREA—Continued

Point	N. Latitude	W. Longitude
7	43°50′	4
8	(4)	67°00′
9	(5)	67°00′

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
(2) U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
(3) U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.)
(4) U.S./Canada maritime boundary.
(5) Intersection of the south-facing ME coastline and 67°00′ W. long.

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate sector catch using VTR, VMS, IVR, and any other available information to determine whether a sector has exceeded any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the sector, each vessel, vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If an ACE allocated to a sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all sectors

and common pool vessels have operated within their ACE or sub-ACL limits, a sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain sectors stay within their ACE while other sectors or the common pool exceed their respective ACEs or sub-ACLs, the sectors that stay within their ACEs shall receive a temporary increase in ACE equal to the amount that other sectors or the common pool exceeded their ACE or sub-ACL, divided among such sectors proportional to each sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that sector to fish under the provisions of the common pool or in another sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the sector operations plan and associated sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of permits/vessels participating in that sector during the fishing year following the overage, individual permit holders that participated in the sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(*1*) *PSC reduction.* If a sector disbands following an overage, and the owner of an individual permit joins another sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the sector during the fishing year in which the overage occurred. For example, if a sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that sector, but then joins another sector during the following fishing year shall have its contribution of GB cod to another sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the purposes of calculating the available GB cod ACE allocated to another sector during that fishing year.

(*2*) *DAS reduction.* If a sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that sector of any of the stocks for which an overage occurred. For example, if a sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(*3*) *Fishing prohibition.* If a sector does not disband following an overage, but otherwise does not have sufficient ACE to cover an overage based upon the PSC of participating permits, that sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that sector shall be prohibited from fishing on a sector trip in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that sector can acquire sufficient ACE from another sector to cover the remaining overage from the previous fishing year. For example, if a sector

comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (i.e., it exceeded its GB cod ACE by 15 mt), each permit/vessel that participating in that sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that sector would not be able to fish on a sector trip in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another sector (i.e., 15 mt overage—10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer*. At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (*i.e.,* through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section. NMFS shall not withhold 20 percent of a sector's ACE at the beginning of a fishing year in which default specifications are in effect, as specified in § 648.90(a)(3).

(iv) *Sector enforcement*—(A) *Sector compliance and joint/several liability*. Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each sector, permit/vessel owner, and vessel operator participating in the sector may be charged jointly and severally for violations of the following sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a sector*. A permit/vessel participating in a sector must remain in the sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the sector pursuant to enforcement actions or other measures specified in an approved sector operations plan, vessel replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a sector participant during the fishing year, the new owner must comply with the sector regulations and the conditions of the sector operations plan, sector contract, or any other binding agreements among participating sector vessels for the remainder of the fishing year. If a permit/vessel has been expelled from a sector, the sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a sector during a specific fishing year consistent with sector rules shall not be eligible to fish in another sector or under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year. For the purposes of this paragraph, ''permit/vessel'' refers to the fishing and landings history associated with a particular permit/vessel enrolled in a specific sector at the start of the fishing year that was used to calculate the PSC for that permit/vessel and contribute to the ACE for each stock allocated to that specific sector.

(v) *Sector monitoring*. Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year,

as specified in this paragraph (b)(1)(v). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each NE multispecies stock regardless of what the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(A) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(B) *Independent third-party monitoring program.* A sector must develop and implement an at-sea or electronic monitoring program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). The primary goal of the at-sea/electronic monitoring program is to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable. All other goals and objectives of groundfish monitoring programs at § 648.11(l) are considered equally-weighted secondary goals. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(*1*) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

(*1*) *Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(*1*)(*i*) of this section, any service provider providing

at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(*1*) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea monitoring program shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(*1*)(*i*) of this section, but shall be less than 100 percent of all sector trips. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board.

(*i*) *At-sea/electronic monitoring*. Coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout, and to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels. In making its determination, NMFS shall take into account the primary goal of the at-sea/electronic monitoring program to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable, the equally-weighted secondary goals and objectives of groundfish monitoring programs detailed at § 648.11(l), the National Standards and requirements of the Magnuson-Stevens Act, and any other relevant factors. NMFS will determine the total target coverage level (*i.e.*, combined NEFOP coverage and at-sea/electronic monitoring coverage) for the upcoming fishing year using the criteria in this paragraph. Annual coverage levels will be based on the most recent 3-year average of the total required coverage level necessary to reach the required coefficient of variation for each stock. For example, if data from the 2012 through 2014 fishing years are the most recent three complete fishing years available for the fishing year 2016 projection, NMFS will use data from these three years to determine 2016 target coverage levels. For each stock, the coverage level needed to achieve the required coefficient of variation would be calculated first for each of the 3 years and then averaged (*e.g.*, (percent coverage necessary to meet the required coefficient of variation in year 1 + year 2 + year 3)/3). The coverage level that will apply is the maximum stock-specific rate after considering the following criteria. For a given fishing year, stocks that are not overfished, with overfishing not occurring according to the most recent available stock assessment, and that in the previous fishing year have less than 75 percent of the sector sub-ACL harvested and less than 10 percent of catch comprised of discards, will not be used to predict the annual target coverage level. A stock must meet all of these criteria to be eliminated as a predictor for the annual target coverage level for a given year.

(*ii*) A sector vessel that declares its intent to exclusively fish using gillnets with a mesh size of 10-inch (25.4-cm) or greater in either the Inshore GB Stock Area, as defined at § 648.10(k)(3)(ii), and/or the SNE Broad Stock Area, as defined at § 648.10(k)(3)(iv), is not subject to the coverage level specified in this paragraph (b)(1)(v)(B)(*1*) of this section provided that the trip is limited to the Inshore GB and/or SNE Broad Stock Areas and that the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater. When on such a trip, other gear may be on board provided that it is stowed and not available for immediate use as defined in § 648.2. A sector trip fishing with 10-inch (25.4-cm) mesh or larger gillnets will still be subject to the annual coverage level if the trip declares its intent to fish in any part of the trip in the GOM Stock area, as defined at § 648.10(k)(3)(i), or the Offshore GB Stock Area, as defined at § 648.10(k)(3)(iii).

(*2*) *Hail reports*. For the purposes of the at-sea monitoring requirements specified in paragraph (b)(1)(v)(B) of this section, sector vessels must submit all hail reports for a sector trip in

which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering at-sea monitoring services. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (b)(1)(v)(B) of this section, or specified in the annual sector operations plan, consistent with paragraph (b)(5) of this section.

(*3*) *Notification of service provider change*. If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(vi) *Sector reporting requirements*. In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports*. Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by statistical area when fishing in multiple broad stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report*. Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report*. An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries*—(A) *Use of DAS*. A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation

and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B) of this section.

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

(ix) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and state permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector

must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

(i) A list of all parties, vessels, and vessel owners who will participate in the sector;

(ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training); vessel owner; and service provider. NMFS will determine the adequate level of insurance and notify potential service providers;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with an at-sea monitor, including, but not limited to, personal injury, death, harassment, or intimidation; and

(K) Evidence that the company is in good financial standing;

(ii) *Service provider performance requirements.* At-sea monitoring service providers must be able to document

compliance with the following criteria and requirements:

(A) A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(*1*) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(*2*) A service provider must be able to deploy at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(*3*) A service provider must report at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(*4*) A service provider must assign at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(*5*) A service provider's at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(*6*) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy an at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(*1*) If the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(*2*) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(*3*) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(*4*) Failure to pay for previous deployments of at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside,

and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(*1*) At-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(*2*) Incident/non-compliance reports (e.g., failure to offload catch); and

(*3*) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

(iii) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:

(*1*) Susceptibility to chronic motion sickness;

(*2*) Ability to live in confined quarters;

(*3*) Ability to tolerate stress;

(*4*) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);

(*5*) Ability to drag heavy objects up to 200 lb (90.7 kg); and

(*6*) Ability to climb a ladder.

(D) A current Red Cross (or equivalent) CPR/first aid certification;

(E) Absence of fisheries-related convictions, based upon a thorough background check; and

(F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(*1*) of this section. This protocol must include a method to allow for waivers in specific circumstances,

including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements*—(A) *Vessel requirements*. In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(5)(iii)(B)(*1*) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements—(1) Confirmation of pre-trip notification*. Upon receipt of a pre-trip notification pursuant to paragraph (b)(5)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(5)(ii) of this section.

(2) *At-sea/electronic monitoring report*. A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards*—(A)*Vessel requirements*. The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(5)(iii)(B)(*1*) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(5)(iv)(B) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements*. An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards*. The at-sea/electronic monitoring operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a sector and granting of exemptions by the Regional Administrator*. (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove sector operations consistent with the Administrative Procedure Act and other applicable law.

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation implementing the NE multispecies FMP, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific times and areas within the NE multispecies year-round closure areas; permitting restrictions (*e.g.*, vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (*e.g.*, roller gear restrictions, etc.); reporting requirements; and AMs specified in § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified in § 648.82, the SAP-specific reporting requirements specified in § 648.85, VMS requirements for Handgear A category permitted vessels as specified in § 648.10, and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Habitat Management Areas as defined in § 648.370; Closed Area I North and Closed Area II, as defined in § 648.81(c)(3) and (4), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(a)(4), where it overlaps with GOM Cod Protection Closures I through III, as defined in § 648.81(d)(4). This list may be modified through a framework adjustment, as specified in § 648.90.

(A) *Fippennies Ledge Area.* The Fippennies Ledge Area is bounded by the following coordinates, connected by straight lines in the order listed:

FIPPENNIES LEDGE AREA

Point	N. latitude	W. longitude
1	42°50.0′	69°17.0′
2	42°44.0′	69°14.0′
3	42°44.0′	69°18.0′
4	42°50.0′	69°21.0′
1	42°50.0′	69°17.0′

(B) [Reserved]

(ii) *Universal sector exemptions.* All sector vessels are exempt from the following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish);

(B) The GOM Cod Protection Closures IV and V specified in § 648.81(d)(4)(iv) and (v).

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Ruhle trawl defined in § 648.85(b)(6)(iv)(J)(*3*) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at any time, if it is determined that sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine

achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(4) Any sector may submit a written request to amend its approved operations plan to the Regional Administrator. If the amendment is administrative in nature, within the scope of and consistent with the actions and impacts previously considered for current sector operations, the Regional Administrator may approve an administrative amendment in writing. The Regional Administrator may approve substantive changes to an approved operations plan in a manner consistent with the Administrative Procedure Act and other applicable law. All approved operations plan amendments will be published on the regional office Web site and will be provided to the Council.

(d) *Approved sector allocation proposals.* Eligible NE multispecies vessels, as specified in paragraph (a)(3) of this section, may participate in the sectors identified in paragraphs (d)(1) through (26) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these sectors shall be specified pursuant to the operations plan and sector contract, as required by this section.

(1) GB Cod Hook Sector.

(2) GB Cod Fixed Gear Sector.

(3) Mooncusser Sector.

(4) Sustainable Harvest Sector.

(5) Sustainable Harvest Sector II.

(6) Sustainable Harvest Sector III.

(7) Port Clyde Community Groundfish Sector.

(8) Northeast Fishery Sector I.

(9) Northeast Fishery Sector II.

(10) Northeast Fishery Sector III.

(11) Northeast Fishery Sector IV.

(12) Northeast Fishery Sector V.

(13) Northeast Fishery Sector VI.

(14) Northeast Fishery Sector VII.

(15) Northeast Fishery Sector VIII.

(16) Northeast Fishery Sector IX.

(17) Northeast Fishery Sector X.

(18) Northeast Fishery Sector XI.

(19) Northeast Fishery Sector XII.

(20) Northeast Fishery Sector XIII.

(21) Tristate Sector.

(22) Northeast Coastal Communities Sector.

(23) State of Maine Permit Banking Sector.

(24) State of Rhode Island Permit Bank Sector.

(25) State of New Hampshire Permit Bank Sector.

(26) State of Massachusetts Permit Bank Sector.

(e) *State-operated permit bank.* A state-operated permit bank must meet and is subject to the following requirements and conditions:

(1) The state-operated permit bank must be initially established using a Federal grant award from NOAA through a valid Memorandum of Agreement (MOA) with NMFS and the state must maintain and comply with such MOA. The MOA must contain and the state must comply with at least the following requirements and conditions:

(i) The state may not associate a state-operated permit bank permit with a vessel engaged in any fishing or other on-the-water activities;

(ii) The state must establish the minimum eligibility criteria to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the state-operated permit bank;

(iii) The state must identify a program contact person for the state agency administering the state-operated permit bank;

(iv) The state must provide to NMFS a list of all permits held by the state under the aegis of the state-operated permit bank, and declare which permits will be used in the coming fishing year for exclusively DAS leasing to common pool vessels and which permits are to be used exclusively for transferring ACE to sectors (including the leasing of DAS to sector vessels for the purpose of complying with the requirements of other FMPs); and

(v) The state must prepare and submit an annual performance report to NMFS, and that said performance report must include, at a minimum, the following elements:

(A) A comprehensive listing of all permits held by the state-operated permit bank, identifying whether a permit was used for ACE transfers to sectors (including DAS leases to the sector members) or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the state-operated permit bank for transfers and leases to sectors and common-pool vessels;

(B) A comprehensive listing of all sectors to which ACE was transferred from the state-operated permit bank, including the amount, by stock, of ACE transferred to each sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;

(C) A comprehensive listing of all sector vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each sector vessel; and

(D) A comprehensive listing of all common pool vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each common pool vessel.

(2) *Eligibility*. If a state is issued a permit that meets sector eligibility requirements, as defined in paragraph (a)(3) of this section, such permit may be held by a state-operated permit bank.

(3) *Allocation and utilization of ACE*—(i) *Allocation of ACE*. The amount of ACE allocated to a state-operated permit bank shall be derived from the permits appropriately declared by the state to be ''ACE permits,'' pursuant to paragraph (e)(1)(i)(v) of this section, for the fishing year and allocated on a stock-by-stock basis pursuant to paragraph (b)(1)(i) of this section.

(ii) *Acquiring ACE*. Except as provided in this paragraph, a state-operated permit bank may not acquire ACE for a fishing year through a transfer from a sector. If ACE is transferred to a sector from a state-operated permit bank, NMFS may authorize the return of the unused portion of such ACE (up to the total originally transferred) to the state-operated permit bank upon written agreement by both parties. The state-operated permit bank may then redistribute the available ACE to another qualifying sector during that fishing year.

(iii) *Transferring ACE*. Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, as well as ACE transfer restrictions described in paragraph (b)(1)(viii) of this section, a state-operated permit bank may transfer ACE, on a stock-by-stock basis, to other state-operated permit banks.

(iv) *Reallocation of GB haddock or GB cod ACE*. Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, a state-operated permit bank may re-allocate all, or a portion, of its GB haddock or GB cod ACE specified for the Eastern U.S./Canada Area to the Western U.S./Canada Area provided it complies with the requirements in paragraph (b)(1)(i)(B)(*2*) of this section.

(4) *Allocation and utilization of days-at-sea*—(i) *Allocation of DAS*. The number of DAS available for a state-operated permit bank to provide to sector or common pool vessels shall be the accumulated NE Multispecies Category A DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state pursuant to paragraph (e)(1)(v) of this section to be either ''ACE permits'' or ''common pool permits'' for that fishing year, consistent with the terms of the state's permit bank MOA.

(ii) *Acquiring DAS*. A state-operated permit bank may not acquire DAS through a lease from a vessel permit (including permits held by other state-operated permit banks), as described in § 684.82(k). If a vessel leases DAS from a state-operated permit bank, NMFS may authorize the return of the unused portion of such DAS to the state-operated permit bank upon written agreement by both parties, provided none of the DAS had been used. The state-operated permit bank may then redistribute the available DAS to another vessel during the same fishing year.

(5) *Annual report*. A state-operated permit bank shall report to the Council annually on the performance of the

state-operated permit bank. Such reports shall include at a minimum and to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all elements listed in paragraph (e)(1)(v) of this section.

(6) *Use of additional funds.* If additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not allocate or transfer any ACE that may be associated with any new permit purchased with those funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP.

(7) *Violation of the terms and conditions applicable to a state-operated permit bank.* If a state or state-operated permit bank violates or fails to comply with any of the requirements and conditions specified in this section or in the MOA referenced in paragraph (e)(1) of this section, the state or state-operated permit bank is subject to the actions and penalties specified in § 648.4(n) or the MOA.

[75 FR 18338, 18374, Apr. 9, 2010, as amended at 76 FR 23072, Apr. 25, 2011; 76 FR 42586, July 19, 2011; 77 FR 16497, Mar. 23, 2012; 77 FR 26125, May 2, 2012; 78 FR 26160, 26208, May 3, 2013; 78 FR 53367, Sept. 30, 2013; 79 FR 22447, Apr. 22, 2014; 79 FR 36436, June 27, 2014; 80 FR 25141, May 1, 2015; 81 FR 26450, May 2, 2016; 82 FR 18715, Apr. 21, 2017; 83 FR 15274, Apr. 9, 2018; 84 FR 17926, Apr. 26, 2019; 84 FR 34815, July 19, 2019]

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(iv) *Declaration.* To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator declaring an intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed and not available for immediate use as defined in § 648.2.

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not

fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

(d) *Non-regulated NE multispecies permit*. A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies, unless otherwise restricted by § 648.86. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

[69 FR 22983, Apr. 27, 2004, as amended at 69 FR 63481, Nov. 2, 2004; 71 FR 62195, Oct. 23, 2006; 75 FR 18348, Apr. 9, 2010; 76 FR 23075, Apr. 25, 2011; 77 FR 19143, Mar. 30, 2012; 79 FR 52580, Sept. 4, 2014; 79 FR 67375, Nov. 13, 2014; 80 FR 25141, May 1, 2015]

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions*. Persons aboard charter/party vessels permitted under this part and not fishing under the DAS program or under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), and recreational fishing vessels in the EEZ, are prohibited from fishing with more than one line per angler, and all other gear on board must be stowed and not available for immediate use as defined in § 648.2.

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes*. Unless further restricted under this section, persons aboard charter or party boats permitted under this part and not fishing under the NE multispecies DAS program or under the restrictions and conditions of an approved sector operations plan, and private recreational fishing vessels may not possess fish in or from the EEZ that are smaller than the minimum fish sizes, measured in total length, as follows:

TABLE 1 TO PARAGRAPH (b)(1)

Species	Minimum size	
	Inches	cm
Cod:		
Inside GOM Regulated Mesh Area [1]	21	53.3
Outside GOM Regulated Mesh Area [1]	21	53.3
Haddock:		
Inside GOM Regulated Mesh Area [1]	17	43.2
Outside GOM Regulated Mesh Area [1]	18	45.7
Pollock	19	48.3
Witch Flounder (gray sole)	14	35.6
Yellowtail Flounder	13	33.0
American Plaice (dab)	14	35.6
Atlantic Halibut	41	104.1
Winter Flounder (black back)	12	30.5
Redfish	9	22.9

[1] GOM Regulated Mesh Area specified in § 648.80(a).

(2) *Exceptions*—(i) *Fillet size*. Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(ii) *Transiting*. Vessels in possession of cod or haddock caught outside the GOM Regulated Mesh Area specified in § 648.80(a)(1) may transit this area with cod and haddock that meet the minimum size specified for fish caught outside the GOM Regulated Mesh Area specified in § 648.80(b)(1), provided all bait and hooks are removed from fishing rods, and any cod and haddock on board has been gutted and stored.

(3) *Fillets*. Fish fillets, or parts of fish, must have at least 2 square inches (5.1 square cm) of skin on while possessed on board a vessel and at the time of landing in order to meet minimum size

requirements. The skin must be contiguous and must allow ready identification of the fish species.

(c) *Possession Restrictions*—(1) *Private recreational vessels*. Persons aboard private recreational fishing vessels during the open season listed in the column titled ''Open Season'' in Table 2 to this paragraph (c), may not possess more fish in or from the EEZ than the amount listed in the column titled ''Possession Limit'' in Table 2 to this paragraph (c).

(i) *Closed season*. Persons aboard private recreational fishing vessels may not possess species, as specified in the column titled ''Species'' in Table 2 to this paragraph (c), in or from the EEZ during that species closed season as specified in the column titled ''Closed Season'' in Table 2 to this paragraph (c).

TABLE 2 TO PARAGRAPH (c)

Species	Open season	Possession limit	Closed season
GB Cod	All Year	10	N/A.
GOM Cod	September 15–30	1	May 1–September 14; October 1–April 30.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29); April 15–30.	15	March 1–April 14.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N. Windowpane Flounder	CLOSED	No retention	All Year.
S. Windowpane Flounder	CLOSED	No retention	All Year.
Ocean Pout	CLOSED	No retention	All Year.
Atlantic Halibut	See paragraph (c)(3).		
Atlantic Wolffish	CLOSED	No retention	All Year.

(ii) [Reserved]

(2) *Charter or Party Boats*. Persons aboard party or charter boats during the open season listed in the column titled ''Open Season'' in Table 3 to this paragraph (c), may not possess more fish in or from the EEZ than the amount listed in the column titled ''Possession Limit'' in Table 3 to this paragraph (c).

TABLE 3 TO PARAGRAPH (c)

Species	Open season	Possession limit	Closed season
GB Cod	All Year	10	N/A.
GOM Cod	September 15–30	1	May 1–September 14; October 1–April 30.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29); April 15–30.	15	March 1–April 14.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N. Windowpane Flounder	CLOSED	No retention	All Year.

TABLE 3 TO PARAGRAPH (c)—Continued

Species	Open season	Possession limit	Closed season
S. Windowpane Flounder	CLOSED	No retention	All Year.
Ocean Pout	CLOSED	No retention	All Year.
Atlantic Halibut	See Paragraph (c)(3).		
Atlantic Wolffish	CLOSED	No retention	All Year.

(3) *Atlantic halibut*. Vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess more than one Atlantic halibut on board the vessel.

(4) *Accounting of daily possession limit*. For the purposes of determining the per day trip limit for cod and haddock for private recreational fishing vessels and charter or party boats, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(5) *Fillet conversion*. For purposes of counting fish for cod and haddock for private recreational fishing vessels and charter or party boats, if fish are filleted, fillets will be converted to whole fish by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(6) *Application of daily possession limit*. Compliance with the daily possession limit for cod and haddock harvested by party, charter, and private recreational fishing vessels, in or from the EEZ, with more than one person aboard, will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the daily possession limit on board a vessel carrying more than one person the violation shall be deemed to have been committed by the owner or operator of the vessel.

(7) *Storage*. Cod and haddock must be stored so as to be readily available for inspection.

(d) *Restrictions on sale*. It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught in or landed from the EEZ by recreational, charter, or party vessels permitted under this part not fishing under a DAS, on a sector trip, or under a Handgear A permit, Handgear B permit, or Small Vessel Category C permit.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM closed areas*. (i) A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(a)(3) and (4) and (d)(4) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(d)(5)(v) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the GOM cod protection closures; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas.

(ii) A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(b)(3) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(b)(2)(iii).

(2) [Reserved]

(3) *Letters of authorization*. To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the NMFS Greater Atlantic Regional Fisheries Office, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not fish on a sector trip, under a NE multispecies DAS, or under the provisions of the NE multispecies Small Vessel Category or Handgear A or Handgear B permit categories, as specified at § 648.82, during the period of participation.

(f) *Recreational fishery AM*—(1) *Catch evaluation*. As soon as recreational catch data are available for the entire previous fishing year, the Regional Administrator will evaluate whether recreational catches exceed any of the sub-ACLs specified for the recreational fishery pursuant to § 648.90(a)(4). When evaluating recreational catch, the components of recreational catch that are used shall be the same as those used in the most recent assessment for that particular stock. To determine if any sub-ACL specified for the recreational fishery was exceeded, the Regional Administrator shall compare the 3-year average of recreational catch to the 3-year average of the recreational sub-ACL for each stock.

(2) *Reactive AM adjustment*. If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the NEFMC, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the FEDERAL REGISTER no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

(3) *Proactive AM adjustment*. When necessary, the Regional Administrator, after consultation with the NEFMC, may adjust recreational measures to ensure the recreational fishery achieves, but does not exceed any recreational fishery sub-ACL in a future fishing year. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the FEDERAL REGISTER prior to the start of the fishing year where possible. In specifying these AMs, the Regional Administrator shall take into account the non-binding prioritization of possible measures recommended by the NEFMC: For cod, first increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits; and for haddock, first increases to minimum size limits, then changes to bag limits, and then adjustments to seasons.

(g) *Regional Administrator authority for 2018 and 2019 Georges Bank cod recreational measures*. For the 2018 or 2019 fishing years, the Regional Administrator, after consultation with the NEFMC, may adjust recreational measures for Georges Bank cod to prevent the recreational fishery from exceeding the annual catch target of 138 mt. Appropriate measures, including adjustments to fishing seasons, minimum fish sizes, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with the final measures published in the FEDERAL REGISTER prior to the start of the fishing year when possible. Separate measures may be implemented for the private and charter/party components of the recreational fishery. Measures in place in fishing year 2019 will be in effect beginning in fishing year 2020, and will remain in effect until they are changed by a Framework Adjustment or Amendment to the FMP, or through an emergency action.

[69 FR 22984, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.89, see the List of CFR Sections Affected, which appears in the

Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described in paragraphs (a)(2) and (b)(1), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process described in paragraph (b)(2) of this section.

(a) *NE multispecies*. For the purpose of this paragraph (a), the term ''NE multispecies fishery'' is defined as common pool vessels, sector vessels, and private recreational and charter/party vessels, as defined in this part; the term ''NE multispecies commercial fishery'' is defined as vessels issued a limited access NE multispecies permit, or an open access NE multispecies Handgear B permit; and the term ''NE multispecies recreational fishery'' is defined as private recreational vessels and charter or party boats, as further defined in this part.

(1) *NE Multispecies annual SAFE Report*. The NE Multispecies Plan Development Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review*. (i) At a minimum, the NE multispecies PDT shall meet on or before September 30 every other year to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use, sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information. The PDT may also review the performance of different user groups or fleet sectors.

(ii) Based on this review, the PDT shall recommend ACLs for the upcoming fishing year(s), as described in paragraph (a)(4) of this section, and develop options for consideration by the Council, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, which may include a preferred option. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; designating habitat areas of particular concern within EFH; and changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs. The PDT must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives.

(iii) In addition, the PDT may develop ranges of options for any of the management measures in the FMP and the following conditions that may be adjusted through a framework adjustment to achieve FMP goals and objectives including, but not limited to: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; accumulation limits due to a permit buyout or buyback; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs (including sub-ACLs for specific stocks and areas (*e.g.,* Gulf of Maine cod)), area management boundaries, and adoption of area-specific management measures including the delineation of inshore/offshore fishing practices, gear restrictions, declaration time periods; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, an optional sub-ACL specific to Handgear A permitted vessels, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; declaration requirements pertaining to when and what time period a vessel must declare into or out of a fishery management area; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other measures currently included in the FMP.

(iv) *Rebuilding plan review for GOM cod and American plaice.* Based on this review of the most current scientific information available, the PDT shall determine whether the following conditions are met for either stock: The total catch limit has not been exceeded during the rebuilding program; new scientific information indicates that the stock is below its rebuilding trajectory (i.e., rebuilding has not progressed as expected); and $F_{rebuild}$ becomes less than 75% F_{MSY}. If all three of these criteria are met, the PDT, and/or SSC, shall undertake a rebuilding plan review to provide new catch advice that includes the following, in priority order: Review of the biomass reference points and calculation of $F_{rebuild}$ ACLs based on the review of the biomass reference points and the existing rebuilding plan.

(v) The Council shall review the ACLs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with applicable law.

(vi) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation

supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vii) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the FEDERAL REGISTER as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

(viii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vii) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(3) *Default OFLs, ABCs, and ACLs.* (i) Unless otherwise specified in this paragraph (a)(3), if final specifications are not published in the FEDERAL REGISTER for the start of a fishing year, as outlined in paragraph (a)(4) of this section, specifications for that fishing year shall be set at 35 percent of the previous year's specifications for each NE multispecies stock, including the U.S./Canada shared resources, for the period of time beginning on May 1 and ending on July 31, unless superseded by the final rule implementing the current year's specifications.

(ii) If the default specifications exceed the Council's recommendations for any stock for the current year, the specifications for that stock shall be reduced to the Council's recommendation through notice consistent with the Administrative Procedure Act.

(iii) These specifications shall be subdivided among the various sub-components of the fishery consistent with the ABC/ACL distribution adopted for the previous year's specifications.

(4) *Process for setting ABCs and ACLs*—(i) *ABC/ACL recommendations.* As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(6) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and

OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

(A) *ABC recommendations.* The PDT shall develop ABC recommendations based on the ABC control rule, the fishing mortality rate necessary to rebuild the stock, guidance from the SSC, and any other available information. The PDT recommendations shall be reviewed by the SSC. Guided by terms of reference developed by the Council, the SSC shall either concur with the ABC recommendations provided by the PDT, or provide alternative recommendations for each stock of regulated species or ocean pout and describe the elements of scientific uncertainty used to develop its recommendations. Should the SSC recommend an ABC that differs from that originally recommend by the PDT, the PDT shall revise its ACL recommendations if necessary to be consistent with the ABC recommendations made by the SSC. In addition to consideration of ABCs, the SSC may consider other related issues specified in the terms of reference developed by the Council, including, but not limited to, OFLs, ACLs, and management uncertainty.

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery.

(ii) *Timing.* The PDT recommendations for setting ABCs and ACLs shall be provided to the SSC prior to the September Council meeting, to the extent possible. The Council shall consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (and TMGC) and shall make a decision on those recommendations prior to December 1, to the extent possible. Once the Council has approved its recommended ACLs, they shall be submitted to NMFS prior to December 1, to the extent possible for approval and implementation. If the Council is submitting a management action as part of the biennial adjustment process, the ACLs can be included in that document along with any necessary analysis required by applicable law. After receipt of the Council recommendation for ACLs, either as part of a new management action or as part of a specification package, as described in paragraph (a)(5) of this section, NMFS shall review the Council's decision and, if consistent with applicable law, implement the ACL in a manner consistent with the Administrative Procedure Act.

(iii) *ABC/ACL distribution.* The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (H) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (H) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

(A) *Regulated species or ocean pout catch by vessels outside of the FMP.* The catch of regulated species or ocean pout that is expected to be harvested by vessels operating in state waters that have not been issued a Federal NE multispecies permit and are not subject to the regulations specified in this part shall be deducted from the ABC/

ACL of each regulated species or ocean pout stock pursuant to the process for specifying ABCs and ACLs, as described in this paragraph (a)(4).

(B) *Regulated species or ocean pout catch by exempted fisheries*. Unless otherwise specified in paragraphs (a)(4)(iii)(F) or (G) of this section, regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery*. Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. The Atlantic sea scallop fishery shall be allocated 40 percent of the GB yellowtail flounder ABC (U.S. share only) in fishing year 2013, and 16 percent in fishing year 2014 and each fishing year thereafter, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section. Based on information available, NMFS shall project the expected scallop fishery catch of GB and SNE/MA yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB or SNE/MA yellowtail flounder sub-ACL, the Regional Administrator may reduce the pertinent scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised GB or SNE/MA yellowtail flounder groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(iii)(H)(*2*) of this section.

(D) *Haddock catch by the midwater trawl Atlantic herring fishery*. *(1) Sub-ACL values*. The midwater trawl Atlantic herring fishery will be allocated sub-ACLs equal to 1 percent of the GOM haddock ABC, and 1.5 percent of the GB haddock ABC (U.S. share only), pursuant to the restrictions in § 648.86(a)(3). The sub-ACLs will be set using the process for specifying ABCs and ACLs described in paragraph (a)(4) of this section. For the purposes of these sub-ACLs, the midwater trawl Atlantic herring fishery includes vessels issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3).

(2) GB haddock sub-ACL Review. Following an assessment of the total GB haddock stock, the Groundfish PDT will conduct a review of the sub-ACL and recommend to the Groundfish Committee and Council a sub-ACL for the midwater trawl Atlantic herring fishery of 1 and up to 2 percent of the GB haddock U.S. ABC. The sub-ACL review should consider factors including, but not limited to, groundfish fishery catch performance, expected groundfish fishery utilization of the GB haddock ACL, status of the GB haddock resource, recruitment, incoming year-class strength, and evaluation of the coefficient of variation of the GB haddock incidental catch estimates for the midwater trawl Atlantic herring fishery.

(E) *Windowpane flounder catch by the Atlantic sea scallop fishery*. The Atlantic sea scallop fishery, as defined in subpart D of this part, will be allocated sub-ACLs equaling 21 percent of the northern windowpane flounder ABC and 36 percent of the southern windowpane flounder ABC. The sub-ACLs will be set using the process for specifying ABCs and ACLs described in paragraph (a)(4) of this section.

(F) *SNE/MA windowpane flounder catch by exempted fisheries*. SNE/MA windowpane flounder catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). The specific value of the sub-components of the ABC/ACL for SNE/MA windowpane flounder distributed to these other fisheries shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section.

(G) *GB yellowtail flounder catch by small mesh fisheries*—(*1*) For the purposes of this paragraph, the term ''small-mesh fisheries'' is defined as vessels fishing with bottom tending mobile gear with a codend mesh size of less than 5 in (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3).

(*2*) Small-mesh fisheries allocation. GB yellowtail flounder catch by the small-mesh fisheries, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail flounder ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(H) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries*. Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (G) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(H).

(*1*) *Recreational allocation*. Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(H)(*1*) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(*i*) *Stocks allocated*. Unless otherwise specified in this paragraph (a)(4)(iii)(H)(*1*), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(*ii*) *Process for determining if a recreational allocation is necessary*. A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(*2*) *Commercial allocation*. Unless otherwise specified in this paragraph (a)(4)(iii)(H)(*2*), the ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to

paragraph (a)(4)(iii)(H)(*1*) of this section, shall be divided between vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(H)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(*3*) *Revisions to commercial and recreational allocations*. Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) *ACL monitoring*—(A) *Landings*. For the purposes of monitoring the catch of regulated species or ocean pout towards the harvest of ACLs and other, non-specified sub-components of the ACLs specified in paragraph (a)(4) of this section, the reporting requirements specified in this part, including dealer reports, VTRs, VMS catch reports, sector catch reports, and other available information shall be used to identify and apportion regulated species or ocean pout landings by stock area.

(B) *Discards*. Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to § 648.87(b)(1)(v)(A).

(v) *Adjustments to ACLs*. The Council may elect to revise the ACL for any regulated species or ocean pout stock in the second fishing year following a biennial review to account for any overages of an ACL in year one that may result in overfishing for a particular stock. Any adjustments to the ACLs in year two will be implemented pursuant to the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section.

(5) *AMs*. Except as specified in paragraphs (a)(4)(iii)(A) through (G) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries*. If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (*i.e.*, common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(H) of this section, then the applicable AM for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each

sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(H)(*2*) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then no AMs shall take effect for that sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(*1*) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(*1*) of this section, then no AMs shall take effect for the recreational fishery.

(D) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, or Atlantic wolffish was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in a subsequent fishing year, consistent with the APA. If reliable information is available, the AM shall be implemented in the fishing year immediately following the fishing year in which the overage occurred. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined before the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded by the groundfish fishery in fishing year 2012, the applicable AM would be implemented for fishing year 2013. If NMFS determined after the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an ACL was not exceeded, the AM will be rescinded, consistent with the Administrative Procedure Act.

(E) *Windowpane flounder.* Unless otherwise specified in paragraphs (a)(5)(i)(E)(*5*) and (*6*) of this section, if NMFS determines the total catch exceeds the overall ACL for either stock of windowpane flounder, as described in this paragraph (a)(5)(i)(E), by any amount greater than the management uncertainty buffer, up to 20 percent greater than the overall ACL, the applicable small AM area for the stock

shall be implemented, as specified in paragraph (a)(5)(i)(E) of this section, consistent with the Administrative Procedure Act. If the overall ACL is exceeded by more than 20 percent, the applicable large AM area(s) for the stock shall be implemented, as specified in this paragraph (a)(5)(i)(E), consistent with the Administrative Procedure Act. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6).

(*1*) *Multispecies Fishery*. If an overage of the overall ACL for southern windowpane flounder is a result of an overage of the sub-ACL allocated to the multispecies fishery pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, the applicable AM area(s) shall be in effect year-round for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip.

(*2*) *Exempted Fisheries*. If an overage of the overall ACL for southern windowpane flounder is a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5 inches (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3). If triggered, the Southern Windowpane Flounder Small AM Area will be implemented from September 1 through April 30; the Southern Windowpane Flounder Large AM Areas 2 and 3 will be implemented year-round.

(*3*) *Combined Overage*. If an overage of the overall ACL for southern windowpane flounder is a result of overages of both the multispecies fishery and exempted fishery sub-ACLs, the applicable AM area(s) shall be in effect for both the multispecies fishery and exempted fisheries as described in this paragraph (a)(5)(i)(E). If a sub-ACL for either stock of windowpane flounder is allocated to another fishery, consistent with the process specified at paragraph (a)(4) of this section, and there are AMs for that fishery, the multispecies fishery AM shall only be implemented if the sub-ACL allocated to the multispecies fishery is exceeded (*i.e.*, the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to paragraph (a)(5) of this section exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

(*4*) *Windowpane AM Areas*. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted.

Point	N latitude	W longitude
Northern Windowpane Flounder and Ocean Pout Small AM Area		
1	41°10′	67°40′
2	41°10′	67°20′
3	41°00′	67°20′
4	41°00′	67°00′
5	40°50′	67°00′
6	40°50′	67°40′
1	41°10′	67°40′
Northern Windowpane Flounder and Ocean Pout Large AM Area		
1	42°10′	67°40′
2	42°10′	67°20′
3	41°00′	67°20′
4	41°00′	67°00′
5	40°50′	67°00′
6	40°50′	67°40′
1	42°10′	67°40′
Southern Windowpane Flounder and Ocean Pout Small AM Area		
1	41°10′	71°30′
2	41°10′	71°20′
3	40°50′	71°20′
4	40°50′	71°30′
1	41°10′	71°30′
Southern Windowpane Flounder and Ocean Pout Large AM Area 1		
1	41°10′	71°50′
2	41°10′	71°10′
3	41°00′	71°10′
4	41°00′	71°20′
5	40°50′	71°20′
6	40°50′	71°50′
1	41°10′	71°50′
Southern Windowpane Flounder and Ocean Pout Large AM Area 2		
1	(1)	73°30′
2	40°30′	73°30′

Point	N latitude	W longitude
3	40°30′	73°50′
4	40°20′	73°50′
5	40°20′	(2)
6	(3)	73°58.5′
7	(4)	73°58.5′
8	[5] 40°32.6′	[5] 73°56.4′
1	(1)	73°30′
Southern Windowpane Flounder Large AM Area 3		
1	41°10′	71°30′
2	41°10′	71°10′
3	41°00′	71°10′
4	41°00′	71°20′
5	40°50′	71°20′
6	40°50′	71°30′
1	41°10′	71°30′

[1] The southernmost coastline of Long Island, NY, at 73°30′ W longitude.
[2] The easternmost coastline of NJ at 40°20′ N latitude, then northward along the NJ coastline to Point 6.
[3] The northernmost coastline of NJ at 73°58.5′ W longitude.
[4] The southernmost coastline of Long Island, NY, at 73°58.5′ W longitude.
[5] The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southernmost coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

(*5*) *Reducing the size of an AM.* If the overall northern or southern windowpane flounder ACL is exceeded by more than 20 percent and NMFS determines that the stock is rebuilt, and the biomass criterion, as defined by the Council, is greater than the most recent fishing year's catch, then only the small AM may be implemented as described in paragraph (a)(5)(i)(D)(*1*) of this section, consistent with the Administrative Procedure Act. This provision applies to a limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip, and to all vessels fishing with trawl gear with a codend mesh size equal to or greater than 5 inches (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3).

(*6*) *Reducing the duration of an AM.* If the northern or southern windowpane flounder AM is implemented in the third fishing year following the year of an overage, as described in paragraph (a)(5)(i)(D) of this section, and NMFS subsequently determines that the applicable windowpane flounder ACL was not exceeded by any amount the year immediately after which the overage occurred (*i.e.*, the second year), on or after September 1 the AM can be removed once year-end data are complete. This reduced duration does not apply if NMFS determines during year 3 that a year 3 overage of the applicable windowpane flounder ACL has occurred. This provision applies to a limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip, and to all vessels fishing with trawl gear with a codend mesh size equal to or greater than 5 inches (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3).

(F) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(F), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented and any vessel issued a Federal permit for any fishery management plan may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(F) of this section. Vessels issued only a charter/party permit, and/or an Atlantic highly migratory species angling permit, and/or an Atlantic highly migratory species charter/headboat permit are exempt from the AM. A vessel issued a permit that is not exempt from the AM in addition to an exempt permit may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented. If the overall ACL is exceeded by more than 20 percent, the applicable AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(F) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved

consistent with the process defined in § 648.85(b)(6); except that selective trawl gear is not required in the portion of the Trawl Gear AM Area between 41 degrees 40 minutes and 42 degrees from April 1 through July 31. When in effect, a limited access NE multispecies permitted vessel with gillnet gear may not fish or be in the Atlantic Halibut Fixed Gear AM Area from March 1 through October 31, unless transiting with its gear stowed and not available for immediate use as defined in § 648.2, or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and there are AMs for that fishery, the multispecies fishery AM shall only be implemented if the sub-ACL allocated to the multispecies fishery is exceeded (*i.e.*, the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other subcomponents of the fishery pursuant to § 648.90(a)(5), exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC HALIBUT TRAWL GEAR AM AREA

Point	N latitude	W longitude
1	42°00′	69°20′
2	42°00′	68°20′
3	41°30′	68°20′
4	41°30′	69°20′

ATLANTIC HALIBUT GILLNET GEAR AM AREA

Point	N latitude	W longitude
1	43°10′	69°40′
2	43°10′	69°30′
3	43°00′	69°30′
4	43°00′	69°40′

(G) *Atlantic wolffish*. If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(G), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in this paragraph (a)(5)(i)(G). If the overall ACL is exceeded by more than 20 percent, the applicable AM area(s) for the stock shall be implemented, as specified in this paragraph (a)(5)(i)(G), and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with its gear stowed and not available for immediate use as defined in § 648.2, or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic wolffish is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the multispecies fishery AM shall only be implemented if the sub-ACL allocated to the multispecies fishery is exceeded (*i.e.*, the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other subcomponents of the fishery pursuant to § 648.90(a)(5), exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC WOLFFISH TRAWL GEAR AM AREA

Point	N latitude	W longitude
1	42°30′	70°30′
2	42°30′	70°15′
3	42°15′	70°15′
4	42°15′	70°10′
5	42°10′	70°10′
6	42°10′	70°20′
7	42°20′	70°20′
8	42°20′	70°30′

ATLANTIC WOLFFISH FIXED GEAR AM AREA 1

Point	N latitude	W longitude
1	41°40′	69°40′
2	41°40′	69°30′
3	41°30′	69°30′
4	41°30′	69°40′

ATLANTIC WOLFFISH FIXED GEAR AM AREA 2

Point	N latitude	W longitude
1	42°30′	70°20′
2	42°30′	70°15′
3	42°20′	70°15′
4	42°20′	70°20′

(H) *Ocean pout.* Unless otherwise specified in paragraphs (a)(5)(i)(E)(*5*) and (*6*) of this section, if NMFS determines the total catch exceeds the overall ACL for ocean pout, as described in paragraph (a)(5)(i)(E) of this section, by any amount greater than the management uncertainty buffer up to 20 percent greater than the overall ACL, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(E) of this section, consistent with the Administrative Procedure Act. If the overall ACL is exceeded by more than 20 percent, large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(E) of this section, consistent with the Administrative Procedure Act. The AM areas for ocean pout are defined in paragraph (a)(5)(i)(E)(*4*) of this section, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6).

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (G) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(iii) *AMs if the incidental catch cap for the Atlantic herring fishery is exceeded.* At the end of the NE multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.90(a)(4)(iii)(D) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the FEDERAL REGISTER, accordance with

the Administrative Procedure Act, prior to the start of the next NE multispecies fishing year after which the overage occurred, if possible, or as soon as possible thereafter if the overage is not determined until after the end of the NE multispecies fishing year in which the overage occurred.

(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS will evaluate whether Atlantic sea scallop fishery catch exceeded the sub-ACLs for any groundfish stocks allocated to the scallop fishery. On January 15, or when information is available to make an accurate projection, NMFS will also determine whether total catch exceeded the overall ACL for each stock allocated to the scallop fishery. When evaluating whether total catch exceeded the overall ACL, NMFS will add the maximum carryover available to sectors, as specified at § 648.87(b)(1)(i)(C), to the estimate of total catch for the pertinent stock.

(A) *Threshold for implementing the Atlantic sea scallop fishery AMs.* If scallop fishery catch exceeds the scallop fishery sub-ACLs for any groundfish stocks in paragraph (a)(4) of this section by 50 percent or more, or if scallop fishery catch exceeds the scallop fishery sub-ACL by any amount and total catch exceeds the overall ACL for a given stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations.

(B) *2017 and 2018 fishing year threshold for implementing the Atlantic sea scallop fishery AMs for Northern windowpane flounder.* For the 2017 and 2018 fishing years only, if scallop fishery catch exceeds the northern windowpane flounder sub-ACL specified in paragraph (a)(4) of this section, and total catch exceeds the overall ACL for that stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations. For the 2019 fishing year and onward, the threshold for implementing scallop fishery AMs for northern windowpane flounder will return to that listed in paragraph (a)(5)(iv)(A) of this section.

(C) *2018 fishing year threshold for implementing the Atlantic sea scallop fishery AM for SNE/MA yellowtail flounder.* For the 2018 fishing year, if the scallop fishery catch exceeds its SNE/MA yellowtail flounder sub-ACL specified in paragraph (a)(4) of this section, and total catch exceeds the overall ACL for that stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations. Beginning in fishing year 2019, the threshold for implementing scallop fishery AMs for SNE/MA yellowtail flounder listed in paragraph (a)(5)(iv)(A) of this section will be in effect.

(D) *2017 through 2020 fishing year threshold for implementing the Atlantic sea scallop fishery AM for GB yellowtail flounder.* For the 2017, 2018, 2019, and 2020 fishing years, if scallop fishery catch exceeds the GB yellowtail flounder sub-ACL specified in paragraph (a)(4) of this section, and total catch exceeds the overall ACL for that stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations. For the 2021 fishing year and onward, the threshold for implementing scallop fishery AMs for GB yellowtail flounder will return to that listed in paragraph (a)(5)(iv)(A) of this section.

(v) *AM if the small-mesh fisheries GB yellowtail flounder sub-ACL is exceeded.* If NMFS determines that the sub-ACL of GB yellowtail flounder allocated to the small-mesh fisheries, pursuant to paragraph (a)(4)(iii)(G) of this section, is exceeded, NMFS shall implement the AM specified in this paragraph consistent with the Administrative Procedures Act. The AM requires that small-mesh fisheries vessels, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, use one of the following approved selective trawl gear in the GB yellowtail flounder stock area, as defined at § 648.85(b)(6)(v)(H): A haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If reliable information is available, the AM shall be implemented in the fishing year immediately following the year in which the

overage occurred only if there is sufficient time to do so in a manner consistent with the Administrative Procedures Act. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined after the start of Year 2 that the small-mesh fisheries sub-ACL for GB yellowtail flounder was exceeded in Year 1, the applicable AM would be implemented at the start of Year 3. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an overage of the small-mesh fisheries sub-ACL did not occur, NMFS shall rescind the AM, consistent with the Administrative Procedure Act.

(6) *Specifications process*—(i) *PDT recommendations*. Unless otherwise developed pursuant to the biennial review process specified in paragraph (a)(2) of this section, the PDT shall develop recommendations for setting ACLs for each regulated species or ocean pout, including ACLs for stocks managed by the Understanding; revising rebuilding programs and associated management measures; or modifying AMs for consideration by the Council's Groundfish Oversight Committee based upon the SAFE report prepared pursuant to paragraph (a)(1) of this section. If the Council determines, based on information provided by the PDT or other stock-related information, that the ACLs should be adjusted between biennial reviews, it can do so through the same process outlined in this section during the interim year.

(ii) *Guidelines*. As the basis for its recommendations under paragraph (a)(5)(i) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information.

(iii) *Groundfish Oversight Committee recommendations*. Based on the PDT's recommendations and any public comment received, the Groundfish Oversight Committee shall recommend to the Council appropriate specifications a period of at least 1 year. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations and publish proposed specifications in a manner consistent with the Administrative Procedure Act. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated.

(iv) *Analysis*. Any specifications package developed pursuant to this paragraph (a)(5) shall be supported by the appropriate NEPA analysis, which shall be made available for public comment.

(b) *Small-mesh multispecies*—(1) *Three-year specifications process, annual review, and specifications package*. The Council shall specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every 3 years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the specifications package, described in paragraph (b)(4) of this section, recommendations for ABC from the SSC, and any other relevant information, the Whiting PDT shall recommend to the Whiting Oversight Committee and Council specifications including the OFL, ABC, ACL, and TAL for each small-mesh multispecies stock for a period of at least 3 years. The Whiting PDT and the Council shall follow the process in paragraph (b)(2) of this section for setting these specifications.

(ii) The Whiting PDT, after reviewing the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded; changes to the SBRM, including the CV-based performance standard, the means by

which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or specifications package described in paragraphs (b)(2) and (b)(4), respectively, of this section, the advice of the SSC, and any other relevant information, the Whiting PDT may also recommend to the Whiting Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) *Council recommendation.* (A) The Council shall review the recommendations of the Whiting PDT, Whiting Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(B) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(C) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(D) If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(2) *Process for specifying ABCs, ACLs, and TALs.* The Whiting PDT shall calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs shall be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake*—(A) *ABCs.* The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(B) *ACLs.* The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs.* (*1*) The red hake TALs are equal to the northern red hake and southern red hake ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(*2*) If more than two-thirds of the southern red hake TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as proscribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

(ii) *Silver and Offshore Hake*—(A) *ABCs.* The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of silver hake. The ABC for the southern stock of silver hake will be increased by 4 percent to account for catch of offshore hake. The combined silver hake and offshore hake ABC in

the southern area will be the southern whiting ABC. The silver hake and whiting ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFLs.

(B) *ACLs*. The northern silver hake and southern whiting ACLs are equal to 95 percent of the ABCs.

(C) *TALs*. (*1*) The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(*2*) If more than two-thirds of the southern whiting TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as proscribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

(3) *Annual Review*. (i) Using a report provided by NMFS that includes trends in the fishery, changes in stock biomass, and total catch data, the Whiting PDT shall meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year specifications. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it shall recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; discards; stock status (exploitation rate and survey biomass); sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Whiting PDT shall consider it during this annual review. Based on this review, the Whiting PDT shall provide guidance to the Whiting Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering this guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) *Specifications package*. (i) The Whiting PDT shall prepare a specification package, including a SAFE Report, at least every 3 years. Based on the specification package, the Whiting PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The specifications package shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The specifications package shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP. The specifications package may include modifications to the OFL, ABC, ACL, TAL, possession limits, and in-season possession limit triggers.

(ii) In any year in which a specifications package, including a SAFE Report, is not completed by the Whiting PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

(5) *Accountability measures for the small-mesh multispecies fishery—(i) In-season adjustment of possession limits*. In-season adjustment accountability measures for the small-mesh multispecies fishery are specified in accordance with the procedures in § 648.86(d)(4).

(ii) *Post-season adjustment for an overage*. If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the in-season accountability measure adjustment

trigger, as specified in paragraph (b)(5)(iii) of this section, shall be reduced in a subsequent fishing year by 1 percent for each 1 percent by which the ACL was exceeded through notification consistent with the Administrative Procedure Act. For example, if the in-season adjustment trigger is 90 percent, and an ACL is exceeded by 5 percent, the adjustment trigger for the stock whose ACL was exceeded would be reduced to 85 percent for subsequent fishing years.

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies in-season accountability measure adjustment triggers are as follows:

Species	In-season adjustment trigger (percent)
Northern Red Hake	37.9
Northern Silver Hake	90
Southern Red Hake	90
Southern Silver Hake	90

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes; effort monitoring; data reporting; possession limits; gear restrictions; closed areas; permitting restrictions; crew limits; minimum fish sizes; onboard observers; minimum hook size and hook style; the use of crucifer in the hook-gear fishery; sector requirements; recreational fishing measures; area closures and other appropriate measures to mitigate marine mammal entanglements and interactions; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other management measures currently included in the FMP.

(ii) The Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable); modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies; adjustments to whiting stock boundaries for management purposes; adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable); season adjustments; declarations; participation requirements for any of the Gulf of Maine/Georges Bank small-mesh multispecies exemption areas; OFL and ABC values; ACL, TAL, or TAL allocations, including the proportions used to allocate by season or area; small-mesh multispecies possession limits, including in-season AM possession limits; changes to reporting requirements and methods to monitor the fishery; and biological reference points, including selected reference time series, survey strata used to calculate biomass, and the selected survey for status determination; and changes

to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(iii) *Adjustment process for whiting DAS.* The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System.* (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the FEDERAL

REGISTER requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the FEDERAL REGISTER and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the FEDERAL REGISTER.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

[69 FR 22984, Apr. 27, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.90, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)—Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)—Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200–mile limit, then in a northerly direction along the 200–mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41°

N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions*—(1) *Minimum mesh size*—(i) *Trawl nets while on a monkfish DAS*. Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the NE multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and NE multispecies DAS*. Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(i), or (c)(2)(i), depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(ii). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(i) of this section.

(iii) *Gillnets while on a monkfish DAS*. The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) diamond mesh, unless:

(A) The owner or operator of a limited access NE multispecies vessel fishing under a NE multispecies category A DAS with gillnet gear in the NFMA changes the vessel's DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip in accordance with the provisions specified under § 648.92(b)(1)(iii);

(B) A vessel issued a Category C or D limited access monkfish permit is fishing under both a monkfish and NE multispecies Category A DAS in the SFMA using roundfish gillnets, as defined at § 648.2, with 6.5-inch (16.5-cm) diamond mesh;

(C) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Mid-Atlantic Exemption Area using roundfish gillnets with a minimum mesh size of 5 inches (12.7 cm) in accordance with the provisions specified under § 648.80(c)(5); or

(D) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Southern New England Dogfish Exemption Area using roundfish gillnets with a minimum mesh size of 6 inches (15.2 cm) in accordance with the provisions specified under § 648.80(b)(7).

(iv) *Authorized gear while on a monkfish and scallop DAS*. Vessels issued a Category C, D, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions*. (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed and not available for immediate use as defined in § 648.2.

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft^2 (0.81 m^2)).

(3) *SFMA trawl roller gear restriction*. The roller gear diameter on any vessel on a monkfish DAS in the SFMA may not exceed 6 inches (15.2 cm) in diameter.

[64 FR 54747, Oct. 7, 1999, as amended at 65 FR 37917, June 19, 2000; 67 FR 50323, Aug. 1, 2002; 70 FR 21942, Apr. 28, 2005; 72 FR 53949, Sept. 21, 2007; 79 FR 52580, Sept. 4, 2014; 81 FR 58865, Aug. 26, 2016]

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General*. A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable

DAS program described in this section, except as otherwise provided in this part.

(1) *End of year carryover*. With the exception of a vessel that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carryover year, a limited access monkfish vessel that has unused monkfish DAS on the last day of April of any year may carry over a maximum of 4 unused monkfish DAS into the next fishing year. A vessel whose DAS have been sanctioned through enforcement proceedings shall be credited with unused DAS based on its DAS allocation minus any DAS that have been sanctioned.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations*—(1) *Limited access monkfish permit holders*—(i) *General provision*. Each vessel issued a limited access monkfish permit shall be allocated 46 monkfish DAS each fishing year, which must be used in accordance with the provisions of this paragraph (b), unless the permit is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS to each limited access monkfish permit shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Unless otherwise specified in paragraph (b)(2) of this section or under this subpart F, a vessel issued a limited access NE multispecies or limited access sea scallop permit that is also issued a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized.

(ii) *DAS restrictions for vessels fishing in the SFMA*. A vessel issued a limited access monkfish permit may not use more than 37 of its 46 monkfish DAS allocation in the SFMA during each fishing year. Each vessel issued a limited access monkfish permit fishing in the SFMA must declare that it is fishing in this area through the vessel call-in system or VMS prior to the start of every trip. In addition, if a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS shall presume that any monkfish DAS used were fished in the SFMA.

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit*. Any limited access NE multispecies vessel fishing on a sector trip or under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip after leaving port, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

(A) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (i.e., use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(2)(i) of this section.

(B) Gillnet vessels that change their DAS declaration in accordance with this paragraph (b)(1)(iii) are not subject to the gillnet minimum mesh size restrictions found at § 648.91(c)(1)(iii), but are subject to the smaller NE multispecies minimum mesh requirements for gillnet vessels found under § 648.80 based upon the NE Multispecies Regulated Mesh Area in which the vessel is fishing.

(iv) *Offshore Fishery Program DAS allocation*. A vessel issued a Category F permit, as described in § 648.95, shall be allocated a prorated number of monkfish DAS as specified in § 648.95(g)(2).

(v) *Research DAS set-aside*. A total of 500 DAS shall be set aside and made available for cooperative research programs as described in paragraph (c) of this section. These DAS shall be deducted from the total number of DAS allocated to all monkfish limited access permit holders, as specified under paragraph (b)(1)(i) of this section. A per vessel deduction shall be determined as follows: Allocated DAS minus the quotient of 500 DAS divided by the total number of limited access permits issued in the previous fishing year. For example, if the DAS allocation equals

31 DAS and there were 750 limited access monkfish permits issued during FY 2006, the number of DAS allocated to each vessel during FY 2007 would be 31 DAS minus 0.7 (500 DAS divided by 750 permits), or 30.3 DAS.

(2) *Category C, D, F, G, or H limited access monkfish permit holders.* (i) *General provision.* Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a vessel issued a limited access monkfish Category C, D, F, G, or H permit and a limited access NE multispecies or scallop DAS permit shall also be counted as a NE multispecies or scallop DAS, as applicable. A vessel issued a limited access monkfish Category C, D, F, or H permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(6), in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

(ii) *Monkfish-only DAS.* When a vessel issued a limited access monkfish Category C, D, F, G, or H permit and a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel shall be allocated ''monkfish-only'' DAS equal to the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS at the start of a fishing year. For example, if a vessel issued a limited access monkfish Category D permit is allocated 46 monkfish DAS and 26 NE multispecies Category A DAS, it would have 20 monkfish-only DAS at the start of each fishing year. The available balance of monkfish-only DAS may vary throughout the fishing year based upon monkfish-only DAS usage and the acquisition or relinquishment of NE multispecies DAS under the NE Multispecies DAS Leasing Program, as specified in paragraph (b)(2)(iii) of this section. A vessel issued a limited access monkfish Category C, D, F, G, or H permit may use monkfish-only DAS without the concurrent use of a NE multispecies DAS at any time throughout the fishing year, regardless of the number of NE multispecies Category A DAS available. When fishing under a monkfish-only DAS, the vessel must fish under the regulations pertaining to a limited access monkfish Category A or B permit, as applicable, and may not retain any regulated NE multispecies. For example, a vessel issued a limited access monkfish Category C permit must comply with the monkfish landing limits applicable to a Category A monkfish permit when fishing under a monkfish-only DAS.

(iii) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A vessel issued a limited access monkfish Category C, D, F, G, or H permit that has monkfish-only DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), must fish its available monkfish-only DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A vessel issued a limited access monkfish Category C, D, F, G, or H permit that leases NE multispecies DAS to another vessel(s), pursuant to § 648.82(k), must forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 31 unused monkfish DAS and 35 allocated NE multispecies DAS leased 10 of its NE multispecies DAS to another vessel, the lessor would forfeit 6 of its monkfish DAS (10 − (35 NE multispecies DAS–31 monkfish DAS) = 6).

(3) *Accrual of DAS.* Unless otherwise provided in § 648.92(b)(8)(v), all monkfish DAS fished shall be charged to the nearest minute.

(4) *DAS credits*—(i) *Good Samaritan credit.* A limited access vessels fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(ii) *Canceled trip DAS credit.* A limited access vessel operating under the DAS program and that end a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements.

(A) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear; and

(B) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancelation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(C) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancelation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(D) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (b)(4)(ii)(B) and (C) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (b)(4)(ii)(B) and (C) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(E) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(F) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year and may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(5) [Reserved]

(6) *Declaring monkfish DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions*—(i) *Number and size of nets*—(A) *Category A and B vessels.* A vessel issued a monkfish limited access Category A or B permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(B) *Category C, D, F, G, and H vessels that possess a limited access NE multispecies permit.* A vessel issued a valid monkfish limited access Category C, D, F, G, or H permit that possesses a valid limited access NE multispecies permit and fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 150 gillnets. A vessel issued

a NE multispecies limited access permit and a limited access monkfish permit, and fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 150 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS shall accrue 15 hours monkfish DAS for all trips less than or equal to 15 hours in duration. Such vessels shall accrue monkfish DAS based on actual time at sea for trips greater than 15 hours in duration. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the requirements and conditions of paragraphs (b)(8)(i)–(v) of this section. A vessel fishing with gillnet gear under a joint monkfish and NE multispecies DAS, as required under § 648.92(b)(2)(i), that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program, as specified at § 648.82(j)(2).

(9) *Category G and H limited access permit holders.* (i) A vessel issued a limited access monkfish Category G or H permit may fish under a monkfish DAS only in the SFMA, as defined at § 648.91(b).

(ii) Vessels issued valid limited access monkfish Category G or H permit that also possess a limited access NE multispecies or limited access scallop permit are subject to the same provisions as Category C or D vessels, respectively, unless otherwise stated under this subpart F.

(10) *DAS Adjustment for Trip Limit Overage.* Any limited access monkfish vessel, required to or voluntarily using a VMS, fishing on a monkfish DAS may land up to the equivalent of one additional day's worth of its trip limit (i.e., amount of monkfish authorized per DAS) than would otherwise be authorized, provided the vessel, vessel owner, or vessel operator notifies the Regional Administrator of the overage via VMS prior to crossing the VMS demarcation line. If the vessel is not required to be, or is not equipped with an operable VMS, the vessel, vessel operator, or owner must notify the Regional Administrator via the call-in system at least 1-hr prior to landing. The monkfish DAS charged to the vessel will then be increased to equal a full 24-hr period plus 1 minute to account for the trip limit overage. For example, if a vessel has the equivalent of two monkfish DAS trip limits (based on its permit category) on board, but has only been declared into the monkfish DAS program for 15 hr, the vessel, vessel owner, or vessel operator may land fish equal to the two DAS trip limits only if the Regional Administrator of the overage is notified via VMS or the call-in system as described above. In this case, the monkfish DAS charged to the vessel would be adjusted from 15 hr to 24 hr and 1 minute.

(c) *Monkfish Research*—(1) *DAS Set-Aside Program.* (i) NMFS shall publish a Request for Proposals (RFP) in the FEDERAL REGISTER consistent with procedures and requirements established by the NOAA Grants Office to solicit proposals for the upcoming fishing year

that are based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other subject matter experts, to review proposals submitted in response to the RFP.

(A) Each panel member shall recommend which research proposals should be authorized to utilize the research DAS set aside in accordance with paragraph (b)(1)(iv) of this section, based on the selection criteria described in the RFP.

(B) NMFS and the NOAA Grants Office shall consider each panel member's recommendation, and NOAA shall provide final approval of the projects, and notify applicants of the grant award through written notification to the project proponent. The Regional Administrator may exempt selected vessel(s) from regulations specified in each of the respective FMPs through the exempted fishing permit (EFP) process specified under § 600.745(b)(2).

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards.

(iv) Research projects shall be conducted in accordance with provisions approved and provided in an EFP issued by the Regional Administrator, as authorized under § 600.745(b)(2).

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the FEDERAL REGISTER. Any allocated research DAS that are not used during the fishing year for which they are granted may be carried over into the next fishing year. Any unallocated research DAS may not be carried over into the next fishing year.

(vi) For proposals that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(2) *DAS Exemption Program.* (i) Vessels that seek to conduct monkfish research within the current fishing year, and that were not selected in the RFP process during the previous fishing year, may seek exemptions from monkfish DAS for the purpose of conducting exempted fishing activities, as authorized at § 600.745(b), under the following conditions and restrictions:

(A) The request for a monkfish DAS exemption must be submitted along with a complete application for an EFP to the Regional Administrator. The requirements for submitting a complete EFP application are provided in § 600.745(b)(2);

(B) Exempted DAS must be available for usage. Exempted DAS shall only be made available by the Regional Administrator if it is determined that the annual set-aside of research DAS will not be used in its entirety, as described in paragraph (c)(1)(v) of this section. If exempted DAS are not available for usage, the applicant may continue to seek an exemption from monkfish DAS, but may be required to conduct an analysis of the impacts associated with the monkfish DAS exemption request before issuance of the EFP application will be considered; and

(C) For EFP applications that require other regulatory exemptions that extend beyond the scope of the analysis contained in the Monkfish FMP, subsequent amendments, or framework adjustments, applicants may be required to provide additional analysis of the impacts of the requested exemptions before issuance of an EFP will be considered.

(ii) Monkfish DAS exemption requests shall be reviewed and approved by the Regional Administrator in the order in which they are received.

[64 FR 54748, Oct. 7, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.92, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.93 Monkfish minimum fish sizes.

(a) *General provisions*. All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

MINIMUM FISH SIZES
(Total Length/Tail Length)

Total Length	Tail Length
17 inches (43.2 cm)	11 inches (27.9 cm)

(b) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish, with the exception of cheeks and livers, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed. Monkfish tails are measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the fourth dorsal spine is ignored. If the fourth dorsal spine or the tail is not intact, the minimum size is measured between the most anterior vertebra and the most posterior portion of the tail.

[64 FR 54749, Oct. 7, 1999, as amended at 68 FR 22329, Apr. 28, 2003; 70 FR 21944, Apr. 28, 2005; 79 FR 41924, July 18, 2014]

§ 648.94 Monkfish possession and landing restrictions.

(a) *General*. Monkfish may be possessed or landed either as tails only, tails with associated heads possessed separately, or in whole form (head on and gutted), or any combination of the three provided the weight of monkfish heads on board does not exceed 1.91 times the weight of monkfish tails on board. When any combination of tails, and whole fish are possessed or landed, the possession or landing limit shall be based on tail weight where all whole monkfish (head on and gutted) are converted to tail weight using the conversion factor of 2.91. For example, whole weight is converted to tail weight by dividing the whole weight by 2.91. Conversely, tail weight is converted to whole weight by multiplying the tail weight by 2.91. If heads only are possessed in combination with tails, the possession or landing limit for monkfish heads may not exceed 1.91 times the tail weight of fish on board, excluding any whole monkfish. The allowed amount of head weight is determined by multiplying the tail weight by 1.91. For example a vessel possessing 100 lb (45 kg) of tail weight may possess an additional 191 lb (87 kg) of monkfish heads (100 × 1.91 = 191). A vessel may not possess heads only without possessing the equivalent weight of tails allowed by using the conversion factor.

(b) *Vessels issued limited access monkfish permits*—(1) *Vessels fishing under the monkfish DAS program in the NFMA*— (i) *Category A vessels*. A limited access monkfish Category A vessel that fishes exclusively in the NFMA under a monkfish DAS may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B vessels*. A limited access monkfish Category B vessel that fishes exclusively in the NFMA under a monkfish DAS may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iii) *Category C vessels*. A limited access monkfish Category C vessel that fishes exclusively in the NFMA under a monkfish-only DAS may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to

whole weight of 2.91). A limited access monkfish Category C vessel that fishes exclusively in the NFMA under both a monkfish and NE multispecies DAS may possess and land an unlimited amount of monkfish. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) *Category D vessels.* A limited access monkfish Category D vessel that fishes exclusively in the NFMA under a monkfish-only DAS may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A limited access monkfish Category D vessel that fishes exclusively in the NFMA under both a monkfish and NE multispecies DAS may possess and land an unlimited amount of monkfish. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(2) *Vessels fishing under the monkfish DAS program in the SFMA*—(i) *Category A, C, and G vessels.* A vessel issued a limited access monkfish Category A, C, or G permit that fishes under a monkfish DAS in the SFMA may land up to 700 lb (318 kg) tail weight or 2,037 lb (924 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail-only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B, D, and H vessels.* A vessel issued a limited access monkfish Category B, D, or H permit that fishes under a monkfish DAS in the SFMA may land up to 575 lb (261 kg) tail weight or 1,673 lb (759 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail-only weight landed, the vessel may land up to 1.91 lb (0.87) of monkfish heads only, as described in paragraph (a) of this section.

(iii) *Category F vessels.* Vessels issued a Category F permit are subject to the possession and landing restrictions specified at § 648.95(g)(1).

(iv) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) through (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program*—(i) *NFMA.* Unless otherwise specified in paragraph (b)(1) of this section, a vessel issued a limited access monkfish Category C permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 900 lb (408 kg) tail weight or 2,619 lb (1,188 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A vessel issued a limited access monkfish Category D permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 750 lb (340 kg) tail weight or 2,183 lb (990 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A vessel issued a limited access monkfish Category C, D, or F permit participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), is also subject to the incidental landing limit specified in paragraph (c)(1)(i) of this section on such trips.

(ii) *SFMA*—(A) *Category C, D, and F vessels.* Limited access monkfish Category C, D, or F vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not a monkfish DAS, may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip. Category C, D, and F vessels participating in the

NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(B) *Category G and H vessels.* Limited access monkfish Category G and H vessels that fish any portion of a trip under a NE multispecies DAS in the SFMA, and not under a monkfish DAS, are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), are also subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C, D, F, G, or H vessels fishing under the scallop DAS program.* A Category C, D, F, G, or H vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(5) *Category C, D, F, G, or H scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C, D, G, or H vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or that are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section, or the landing limit specified in § 648.95(g)(1), if issued a Category F permit. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(6) *Vessels not fishing under a NE multispecies, scallop, or monkfish DAS.* The possession limits for all limited access monkfish vessels when not fishing under a NE multispecies, scallop, or monkfish DAS are the same as those possession limits applicable to a vessel issued a monkfish incidental catch permit specified under paragraphs (c)(3) through (c)(8) of this section.

(c) *Vessels issued a monkfish incidental catch permit*—(1) *Vessels fishing under a NE multispecies DAS*—(i) *NFMA.* A vessel issued a valid monkfish incidental catch (Category E) permit fishing under a NE multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS, or 25 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail-only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *SFMA.* If any portion of the trip by a vessel issued a monkfish incidental catch (Category E) permit, or issued a valid limited access Category G or H permit, is fished under a NE multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(2) *Scallop vessels fishing under a scallop DAS.* A scallop vessel issued a monkfish incidental catch (Category E) permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per DAS (or any prorated

combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(3) *Vessels fishing with large mesh and not fishing under a DAS* —(i) A vessel issued a valid monkfish incidental catch limit (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs with mesh no smaller than specified at §§ 648.80(a)(3)(i) and (a)(4)(i), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at § 648.80(b)(2)(i), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE RMA under a Skate Bait Letter of Authorization, as authorized under § 648.322(c), while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, not to exceed 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the SNE or MA RMAs west of the MA Exemption Area boundary with mesh no smaller than specified at § 648.108(a)(1) while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, up to a maximum of 450 lb (204 kg) tail weight or 1,310 lb (594 kg) whole weight of monkfish per trip, unless that vessel is fishing under a Skate Bait Letter of Authorization in the SNE RMA. Such a vessel is subject to the incidental catch limit specified under paragraph (c)(3)(iii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(4) *Vessels fishing with small mesh and not fishing under a DAS.* A vessel issued

a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(5) *Small vessels*. A vessel issued a limited access NE multispecies small vessel category permit and a valid monkfish incidental catch (Category E) permit that is less than 30 ft (9.1 m) in length and that elects not to fish under the NE multispecies DAS program, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail only weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail weight landed, the vessel may land up to 1.91 lb of monkfish heads only, as described in paragraph (a) of this section.

(6) *Vessels fishing with handgear*. A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(7) *Vessels fishing with surfclam or ocean quahog dredge gear*. A vessel issued a valid monkfish incidental catch (Category E) permit and a valid surfclam or ocean quahog permit, while fishing exclusively with a hydraulic clam dredge or mahogany quahog dredge, may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, not to exceed 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(8) *Scallop vessels not fishing under a scallop DAS with dredge gear*—(i) *General provisions*. A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a valid General Category sea scallop permit or a limited access sea scallop vessel not fishing under a scallop DAS, while fishing exclusively with scallop dredge gear as specified in § 648.51(b), may possess, retain, and land up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per day or partial day, up to a maximum of 150 lb (68 kg) tail weight or 437 lb (198 kg) whole weight per trip, unless otherwise specified in paragraph (c)(8)(ii) of this section. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Limited access scallop vessels fishing in Sea Scallop Access Areas*. A vessel issued a valid monkfish incidental catch (Category E) permit or a valid limited access Category C, D, F, G, or H permit, and also possessing a limited access sea scallop permit while fishing

exclusively with scallop dredge gear as specified in § 648.51(b), and fishing in one of the established Sea Scallop Access Areas specified under § 648.59, may possess, retain, and land up to 300 lb (136 kg) tail weight or 873 lb (396 kg) whole weight of monkfish per day or partial day fished within the boundaries of the Sea Scallop Access Area. Time within the applicable access area, for purposes of determining the incidental catch limit, will be determined through the vessel's VMS unit. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 2.91. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(d) *Monkfish liver landing restrictions.* (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio: (0.10) × [(tail weight × 2.91) + (whole fish × 1)].

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish under the less restrictive measures of the NFMA, may transit the SFMA provided that the vessel does not harvest or possess monkfish, or any other fish, from the SFMA, and the vessel's gear is properly stowed and not available for immediate use as defined in § 648.2.

(f) *Area declaration requirement for a vessel fishing exclusively in the NFMA.* A vessel intending to fish for, fishing for, possessing, or landing monkfish under a NE multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish exclusively in the NFMA for the entire trip. In addition, a vessel fishing under a monkfish DAS must declare its intent to fish in the NFMA through the vessel's VMS unit or through the vessel call-in system, as applicable. A vessel that is not required to and does not possess a VMS unit must also declare its intent to fish in the NFMA by obtaining a letter of authorization from the Regional Administrator, which is effective for a period of not less than 7 days, and fishing exclusively in the NFMA during the effective period of that letter of authorization. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA, and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

(g) *Other landing restrictions.* Vessels are subject to any other applicable landing restrictions of this part.

[64 FR 54749, Oct. 7, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 648.94, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 648.95 Offshore Fishery Program in the SFMA.

(a) *General.* Any vessel issued a valid monkfish limited access permit is eligible to apply for a Category F permit in order to fish in the Offshore Fishery Program in the SFMA.

(1) A vessel issued a Category F permit is subject to the specific provisions and conditions of this section while fishing on a monkfish DAS.

(2) A vessel issued a limited access monkfish Category C or D permit that applies for and is issued a Category F permit remains subject to the provisions specific to Category C and D vessels, unless otherwise specified under this subpart F.

(3) Limited access Category C or D vessels that apply for and are issued a Category F permit remain subject to the provisions specific to Category C and D vessels, unless otherwise specified under this subpart F.

(b) *Declaration.* To fish in the Offshore Fishery Program, a vessel must

obtain a monkfish limited access Category F permit and fish under this permit for the entire fishing year, subject to the conditions and restrictions specified under this part. The owner of a vessel, or authorized representative, may change the vessel's limited access monkfish permit category within 45 days of the effective date of the vessel's permit, provided the vessel has not fished under the monkfish DAS program during that fishing year. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel's permit category will remain unchanged for the duration of the fishing year.

(c) *Offshore Fishery Program Area*. The Offshore Fishery Program Area is bounded on the south by 38° 00′ N. lat. and on the north, west, and east by the following coordinates, connected in the order listed by rhumb lines.

Point	N. latitude	W. longitude
1	41°18.6′	66°24.8′
2	40°55.5′	66°38.0′
3	40°45.5′	68°00.0′
4	40°37.0′	68°00.0′
5	40°30.0′	69°00.0′
6	40°22.7′	69°00.0′
7	40°18.7′	69°40.0′
8	40°21.0′	71°03.0′
9	39°41.0′	72°32.0′
10	38°47.0′	73°11.0′
11	38°04.0′	74°06.0′

(d) *Season*. October 1 through April 30 each year.

(e) *Restrictions*. (1) Except for the transit provisions provided for in paragraph (f) of this section, a vessel issued a valid Category F permit may only fish for, possess, and land monkfish in or from the Offshore Fishery Program Area while on a monkfish DAS.

(2) A vessel enrolled in the Offshore Fishery Program is restricted to fishing under its monkfish DAS during the season in paragraph (d) of this section.

(3) A vessel issued a limited access monkfish Category F permit fishing on a monkfish DAS is subject to the minimum mesh size requirements specified in § 648.91(c)(1)(i) and (c)(1)(iii), as well as the other gear requirements specified in § 648.91(c)(2) and (c)(3).

(4) A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 during the entire season established under paragraph (d) of this section. Unless otherwise required to maintain an operational VMS unit under the VMS notification requirements specified at § 648.10(b), a vessel issued a Category F permit may turn off its VMS unit outside of that season.

(f) *Transiting*. A vessel issued a limited access monkfish Category F permit fishing under a monkfish DAS that is transiting to or from the Offshore Fishery Program Area, described in paragraph (c) of this section, shall have all gear stowed and not available for immediate use as defined in § 648.2.

(g) *Monkfish landing limits and DAS allocations*. (1) A vessel issued a limited access monkfish Category F permit may land up to 1,600 lb (726 kg) tail weight or 4,656 lb (2,112 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91).

(2) The monkfish DAS allocation for vessels issued a Category F permit shall be equal to the trip limit applicable to the vessel's monkfish limited access permit category divided by the fixed daily possession limit specified in paragraph (g)(1) of this section, and then multiplied by the DAS allocation for limited access monkfish vessels not issued Category F permits, specified under § 648.92(b)(1). For example, if a vessel has a limited access monkfish Category C permit, and the applicable trip limit is 800 lb (363 kg) for this category, and the vessel has an annual allocation of 40 monkfish DAS, then the monkfish DAS allocated to that vessel when issued a Category F permit would be 20 monkfish DAS (800 lb divided by 1,600 lb, multiplied by 40 monkfish DAS equals 20 DAS). Any carryover monkfish DAS will be included in the calculation of monkfish DAS for Category F vessels.

(3) A vessel issued a limited access monkfish Category F permit that is fishing under a NE multispecies DAS in the NFMA is subject to the incidental landing limit specified at § 648.94(b)(3).

(4) When not fishing on a monkfish DAS, a vessel issued a limited access monkfish Category F permit may fish

under the regulations applicable to the monkfish incidental catch (Category E) permit, specified at § 648.94(c).

(h) *DAS usage by NE multispecies or sea scallop limited access permit holders.* A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(2).

[70 FR 21945, Apr. 28, 2005, as amended at 72 FR 20960, Apr. 27, 2007; 72 FR 53942, Sept. 21, 2007; 74 FR 20557, May 4, 2009; 79 FR 41925, July 18, 2014; 79 FR 52580, Sept. 4, 2014]

§ 648.96 FMP review, specification, and framework adjustment process.

(a) *Annual review and adjustment process.* The NEFMC and MAFMC, the Monkfish Plan Development Team (PDT), and the Monkfish Advisory Panel shall monitor the status of the monkfish fishery and resource.

(1) *Monkfish annual SAFE Report.* The PDT shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the monkfish fishery. The SAFE Report shall be the primary vehicle for the presentation of updated biological and socio-economic information regarding the monkfish fishery. The SAFE report shall provide source data for any adjustments to the management measures that may be needed for the Councils to meet the goals and objectives of the FMP.

(2) *Annual review.* The PDT shall meet at least annually to conduct a review of the monkfish fishery in relation to the goals and objectives specified in the Monkfish FMP, including a review of catch relative to the annual catch targets (ACTs) for each management area. They shall review available data pertaining to discards and landings; DAS and other measures of fishing effort; stock status and fishing mortality rate information, if available; enforcement of and compliance with management measures; and any other relevant information. Based on this review, the PDT shall provide guidance to the NEFMC and MAFMC regarding the need to adjust management measures to better achieve the FMP's goals and objectives. After considering the PDT's guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the annual framework adjustment process specified in paragraph (a)(3) of this section, the in-season framework adjustment process specified in paragraph (b) of this section, or through an amendment to the FMP.

(3) *Annual framework adjustment procedures.* (i) If necessary based on the annual review, the Councils may develop adjustments to management measures to achieve the annual catch target (ACT) for the upcoming fishing year, and may develop other management options to better achieve the goals and objectives of the Monkfish FMP, which may include a preferred option. The Councils must demonstrate through analysis and documentation that any options they develop are expected to meet the goals and objectives of the Monkfish FMP. Additionally, if necessary based on the recommendation of the NEFMC's Scientific and Statistical Committee (SSC), the Councils may recommend measures to revise the ABCs and ACLs for the upcoming fishing year(s) as described in paragraph (c) of this section.

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; changes to the Monkfish Research Set-Aside Program;

and other frameworkable measures included in §§ 648.55 and 648.90.

(iii) The Councils shall review the options analyzed by the PDT and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options analyzed by the PDT and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils submit a recommendation that is consistent with other applicable law but does not meet the Monkfish FMP's goals and objectives, the Regional Administrator may adopt any option developed by the Councils and analyzed by the PDT that has not been rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils and that meets the Monkfish FMP's goals and objectives.

(iv) If the Councils submit, on or before December 1, a recommendation to the Regional Administrator after one meeting with each Council, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the FEDERAL REGISTER as a proposed rule, or as otherwise authorized under the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (b) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs with the Councils' recommendation the recommended management measures may be published as a proposed rule or a final rule, in accordance with the Administrative Procedure Act. If the effective date of a final rule to implement the recommended measures falls after the start of the fishing year, fishing may continue under the existing regulations, but any DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that fishing year.

(v) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule, if possible, shall be published in the FEDERAL REGISTER prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may implement through rulemaking in accordance with the Administrative Procedure Act one of the options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(b) *Within-season management action*. At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP.

(1) *In-season Framework adjustment procedures*. (i) Framework adjustments shall require at least one initial meeting of the Joint Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two final Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to

the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(ii) Recommended adjustments to management measures must come from the categories specified under paragraph (a)(3)(i) of this section, including specification of ABC and ACLs, if necessary.

(2) *Councils' recommendation*. After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Adjustments for gear conflicts*. The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(g) and (h).

(4) *Action by NMFS*. (i) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(ii) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Process for setting ABCs and ACLs*. (1) The Councils or the PDT may develop options for setting ABC, ACL, and OFL for each monkfish stock, as necessary, as part of the annual review and adjustment process specified in paragraph (a) of this section, or as otherwise deemed necessary following the in-season adjustment process specified in paragraph (b) of this section. These options shall be submitted to the SSC for consideration. The Councils or the PDT may recommend to the SSC that ABC, ACL, and OFL are specified for each monkfish stock for multiple years as determined necessary to best align management with the stock assessment process for this fishery.

(i) *ABC recommendation*. The Councils or the PDT shall calculate ABC values for each monkfish stock based on the ABC control rule established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Councils. The SSC shall either concur with these

ABC calculations, or provide alternative recommendations for each stock and describe the elements of scientific uncertainty used to develop its recommendations. If the SSC concurs with the ABC calculations, the revised ABC values are automatically updated and no action by the Councils is necessary. If the SSC provides an alternative recommendation for calculating the ABC than that currently specified in the FMP, the Councils would need to need to take action through the annual or in-season framework adjustment process specified in paragraphs (a) and (b) of this section, respectively, to implement the SSC's recommendation. The SSC may also consider other related issues specified in the terms of reference developed by the Councils, including, but not limited to, OFLs, ACLs, and management uncertainty.

(ii) *ACL recommendations*. The Councils shall establish ACLs for each management area that are equivalent to the ABCs calculated using the control rule established in the FMP, and reviewed and recommended by the SSC.

(iii) *Timing*. If determined necessary under the annual review process, the Councils shall develop and approve any recommendations for ABCs and ACLs prior to December 31, to the extent possible. Once the Councils have approved the recommended ABCs and ACLs, only if they require adjustments to the ACTs described in paragraph (d) shall they be submitted to NMFS as part of an annual framework adjustment or in-season framework adjustment, as described in paragraphs (a) and (b) of this section, along with any necessary analysis required by applicable law. After receipt of the Councils' recommendation for ACLs, NMFS shall review the Councils' decision and, if consistent with applicable law, implement the ACLs in accordance with the Administrative Procedure Act.

(d) *Accountability Measures (AMs)*. (1) *Specification of ACTs*. Through the annual review process described in paragraph (a) of this section, or as otherwise determined necessary, the Councils shall specify ACTs for each management area that are set sufficiently below the ACL to account for management uncertainty and prevent the ACL from being exceeded. The ACTs established for each management area shall be the basis for setting management measures (DAS and trip limits), after accounting for incidental catch in non-directed fisheries and discards in all fisheries.

(2) *ACL overages and adjustments*— (i) *Council action*. The Councils shall revise the ACT for a monkfish stock if it is determined that the ACL was exceeded in any given year, based upon, but not limited to, available landings and discard information. The amount of an ACL overage shall be deducted from the ACT for the corresponding monkfish stock on a pound-for-pound basis. The revised ACT and corresponding management measures (DAS and trip limits) shall be implemented through either the annual or in-season framework adjustment process, specified in paragraphs (a) and (b) of this section, in the second fishing year following the fishing year in which the ACL overage occurred.

(ii) *NMFS action*. If the Councils fail to take appropriate action to correct an ACL overage consistent with paragraph (d)(1)(i) of this section, the Regional Administrator shall implement the required adjustment, as described in paragraph (d)(2)(i) of this section, including the specification of DAS and trip limits using a formulaic approach developed by the PDT, in accordance with the Administrative Procedure Act and other applicable law. Notification of the proposed ACL revision and DAS and/or trip limit adjustments shall be published in the FEDERAL REGISTER no later than January 1, if possible, for implementation on May 1 of the second fishing year following the fishing year in which the ACL overage occurred.

(e) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[76 FR 30274, May 25, 2011, as amended at 76 FR 81849, Dec. 29, 2011; 80 FR 37196, June 30, 2015]

§ 648.97 Closed areas.

(a) *Oceanographer Canyon Closed Area*. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Oceanographer Canyon Closed Area (copies of a chart depicting

this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

OCEANOGRAPHER CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) OC1	40°10′	68°12′
(2) OC2	40°24′	68°09′
(3) OC3	40°24′	68°08′
(4) OC4	40°10′	67°59′
(5) OC1	40°10′	68°12′

(b) *Lydonia Canyon Closed Area*. No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Lydonia Canyon Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, while on a monkfish DAS:

LYNDONIA CANYON CLOSED AREA

Point	N. Lat.	W. Long.
(1) LC1	40°16′	67°34′
(2) LC2	40°16′	67°42′
(3) LC3	40°20′	67°43′
(4) LC4	40°27′	67°40′
(5) LC5	40° 27′	67°38′
(6) LC1	40°16′	67°34′

[70 FR 21946, Apr. 28, 2005]

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) The Summer Flounder Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

(2) *Periodicity*. The summer flounder commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Summer Flounder Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the summer flounder stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

[76 FR 60626, Sept. 29, 2011]

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) The Summer Flounder Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Summer Flounder Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Summer Flounder Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

[76 FR 60626, Sept. 29, 2011]

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures*. The Summer Flounder Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to be considered by the Summer Flounder Monitoring Committee are:

(1) Research quota set from a range of 0 to 3 percent of the allowable landings level for both the commercial and recreational sectors.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Restrictions on gear other than otter trawls.

(5) Adjustments to the exempted area boundary and season specified in § 648.108(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data reviewed by Summer Flounder Monitoring Committee during the specification process, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(6) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the recreational harvest limit, set after reductions for research quota.

(7) Recreational minimum fish size.

(8) Recreational season.

(9) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(10) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(11) Modification of existing AM measures and ACT control rules utilized by the Summer Flounder Monitoring Committee.

(b) *Specification fishing measures*. The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary that are projected to ensure the sector-specific ACLs for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC.

(c) After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a coastwide commercial quota, a recreational harvest limit, research set-aside, adjustments to ACL or ACT resulting from AMs, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(1) *Distribution of annual commercial quota*. (i) The annual commercial quota will be distributed to the states, based

upon the following percentages; state followed by percent share in parenthesis: Maine (0.04756); New Hampshire (0.00046); Massachusetts (6.82046); Rhode Island (15.68298); Connecticut (2.25708); New York (7.64699); New Jersey (16.72499); Delaware (0.01779); Maryland (2.03910); Virginia (21.31676); North Carolina (27.44584).

(ii) [Reserved]

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or its entire annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(i) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(A) The transfer or combination would preclude the overall annual quota from being fully harvested;

(B) The transfer addresses an unforeseen variation or contingency in the fishery; and

(C) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(ii) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made;

(iii) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(iv) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(d) *Recreational specification measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and ASMFC measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different

combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER as soon as possible to implement the overall percent adjustment in recreational landings required for the fishing year, and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the FEDERAL REGISTER to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(e) *Research quota.* See § 648.22(g).

[76 FR 60626, Sept. 29, 2011, as amended at 76 FR 81849, Dec. 29, 2011; 80 FR 37196, June 30, 2015]

§ 648.103 Summer flounder accountability measures.

(a) *Commercial sector EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the commercial sector ACL to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the sector ACL to be exceeded.

(b) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas, irrespective of whether the commercial sector ACL is exceeded. The overage deduction will be based on landings for the current year through October 31

and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing such restoration.

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(i) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(B) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(iii) *If biomass is above* B_{MSY}. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5),

but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above* B_{MSY}. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

[76 FR 60628, Sept. 29, 2011, as amended at 78 FR 76763, Dec. 19, 2013; 83 FR 53826, Oct. 25, 2018]

§ 648.104 Summer flounder minimum fish sizes.

(a) *Moratorium (commercial) permitted vessels.* The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19 inches (48.3 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

[76 FR 60629, Sept. 29, 2011, as amended at 78 FR 37479, June 21, 2013; 82 FR 31494, July 7, 2017]

§ 648.105 Summer flounder recreational fishing season.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3), and fishermen subject to

the possession limit, may fish for summer flounder from May 15 through September 15. This time period may be adjusted pursuant to the procedures in § 648.102.

[83 FR 24947, May 31, 2018]

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits*. Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) *Commercially permitted vessel possession limits*. Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in^3 (2.5 ft^3 or 70.79 cm^3).

[76 FR 60629, Sept. 29, 2011, as amended at 78 FR 37479, June 21, 2013; 80 FR 35258, June 19, 2015; 82 FR 31494, July 7, 2017]

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2019 are the conservation equivalent of the minimum size, season, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b), and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—July 1 through August 31; minimum size—20 inches (50.8 cm); and possession limit—two fish.

[79 FR 38264, July 7, 2014, as amended at 80 FR 35258, June 19, 2015; 81 FR 51378, Aug. 4, 2016; 82 FR 31494, July 7, 2017; 83 FR 24947, May 31, 2018; 84 FR 31745, July 3, 2019]

§ 648.108 Summer flounder gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net, except as required in a TED extension, in accordance with § 223.206(d)(2)(iii) of this title.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a Summer Flounder Small-Mesh Exemption Area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.108(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(iv) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined paragraph (c) of this section, if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in paragraph (a) of this section.

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. Nets must be stowed and not available for immediate use as defined in § 648.2.

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.102.

[76 FR 60629, Sept. 29, 2011, as amended at 79 FR 52583, Sept. 4, 2014; 81 FR 51378, Aug. 4, 2016]

§ 648.109 Sea turtle conservation.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

[76 FR 60630, Sept. 29, 2011]

§ 648.110 Summer flounder framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of

the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, if after reviewing the MAFMC's recommendation and supporting information:

(i) NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

[76 FR 60630, Sept. 29, 2011, as amended at 76 FR 1849, Dec.. 29, 2011; 80 FR 37196, June 30, 2015]

Subpart H—Management Measures for the Scup Fishery

SOURCE: 61 FR 43426, Aug. 23, 1996, unless otherwise noted.

§ 648.120 Scup Annual Catch Limit (ACL).

(a) The Scup Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass FMP.

(2) *Periodicity*. The scup commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Scup Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the scup stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

[76 FR 60631, Sept. 29, 2011]

§ 648.121 Scup Annual Catch Target (ACT).

(a) The Scup Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Scup Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Scup Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

[76 FR 60631, Sept. 29, 2011]

§ 648.122 Scup specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures*. The Scup Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected

to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to be considered by the Scup Monitoring Committee are as follows:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) The commercial quota for each of the three periods specified in paragraph (c)(1) of this section for research quota.

(3) Possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24–hour period (calendar day).

(4) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(5) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (c)(5) of this section.

(6) Minimum mesh size.

(7) Recreational possession limit set from a range of 0 to 50 scup to achieve the recreational harvest limit, set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear.

(11) Season and area closures in the commercial fishery.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

(13) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(14) Modification of existing AM measures and ACT control rules utilized by the Scup Monitoring Committee.

(b) *Specification of fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified ACLs will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to ensure that the sector ACL will not be exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement annual measures.

(c) *Distribution of commercial quota.* (1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer—May–September	38.95
Winter II—October–December	15.94

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(d) *Winter I and II commercial quota adjustment procedures.* The Regional Administrator will monitor the harvest of commercial quota for the Winter I period based on dealer reports, state data, and other available information

and shall determine the total amount of scup landed during the Winter I period. In any year that the Regional Administrator determines that the landings of scup during Winter I are less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the FEDERAL REGISTER, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by the amount of the Winter I under-harvest. The Regional Administrator shall also adjust, through publication of a notification in the FEDERAL REGISTER, the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits established through the annual specifications-setting process.

(e) *Research quota*. See § 648.21(g).

[76 FR 60631, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37196, June 30, 2015; 83 FR 17315, Apr. 19, 2018]

§ 648.123 Scup accountability measures.

(a) *Commercial sector period closures*. The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(1) *Commercial ACL overage evaluation*. The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment by quota period*. (i) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (a)(2)(iv) of this section, and irrespective of whether the commercial sector ACL is exceeded. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed in paragraphs (a)(2)(ii) through (iii) of this section:

(ii) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(iii) For the Winter II quota period, landings in excess of the allocation will be deducted from the Winter II period for the following year through notification in the FEDERAL REGISTER during July of the following year. The overage deduction will be based on landings information available for the Winter II period as of June 30 of the following year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(iv) During a fishing year in which the Winter I quota period is closed prior to April 15, a state may apply to

the Regional Administrator for authorization to count scup landed for sale in that state from April 15 through April 30 by state-only permitted vessels fishing exclusively in waters under the jurisdiction of that state against the Summer period quota. Requests to the Regional Administrator to count scup landings in a state from April 15 through April 30 against the Summer period quota must be made by letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

(b) *Non-landing accountability measure*. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status*. If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding*. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above* B_{MSY}. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

(c) *Recreational ACL*. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs*. If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown*. If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above B_{MSY}.* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

[76 FR 60632, Sept. 29, 2011, as amended at 78 FR 76763, Dec. 19, 2013; 83 FR 17315, Apr. 19, 2018; 83 FR 53827, Oct. 25, 2018]

§ 648.124 Scup commercial season and commercial fishery area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	Latitude	Longitude
SGA1	39°20′ N	72°37′ W.
SGA2	39°4.38′ N	72°47.22′ W.
SGA3	38°28.65′ N	73°29.37′ W.
SGA4	38°29.72′ N	73°30.65′ W.
SGA5	38°26.32′ N	73°33.44′ W.
SGA6	38°25.08′ N	73°34.99′ W.
SGA7	38°13.15′ N	73°49.77′ W.
SGA8	38°13.74′ N	73°50.73′ W.
SGA9	38°11.98′ N	73°52.65′ W.
SGA10	37°29.53′ N	74°29.95′ W.
SGA11	37°29.43′ N	74°30.29′ W.
SGA12	37°28.6′ N	74°30.6′ W.
SGA13	37°6.97′ N	74°40.8′ W.
SGA14	37°5.83′ N	74°45.57′ W.

SOUTHERN GEAR RESTRICTED AREA—Continued

Point	Latitude	Longitude
SGA15	37°4.43′ N	74°41.03′ W.
SGA16	37°3.5′ N	74°40.39′ W.
SGA17	37° N	74°43′ W.
SGA18	37° N	75°3′ W.
SGA19	38° N	74°23′ W.
SGA20	39°20′ N	72°53′ W.
SGA1	39°20′ N	72°37′ W.

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Longfin squid; black sea bass; and silver hake (whiting).

(b) *Northern Gear Restricted Area 1*—(1) *Restrictions*. From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area 1 that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Northern Gear Restricted Area 1 is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA 1

Point	N. lat.	W. long.
NGA1	41°00′	71°00′
NGA2	41°00′	71°30′
NGA3	40°00′	72°40′
NGA4	40°00′	72°05′
NGA1	41°00′	71°00′

(2) *Non-exempt species*. Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area 1 that are fishing for, or in possession of, the following non-exempt species: Longfin squid squid; black sea bass; and silver hake (whiting).

(c) *Transiting*. Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are stowed and not available for immediate use as defined in § 648.2.

(d) [Reserved]

(e) *Addition or deletion of exemptions*. The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.130(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

(f) *Exempted experimental fishing*. The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area; use fishing gear that does not conform to the regulations; possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section; or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

[76 FR 60633, Sept. 29, 2011, as amended at 77 FR 16480, Mar. 21, 2012; 79 FR 52580, Sept. 4, 2014; 81 FR 78731, Nov. 9, 2016]

§ 648.125 Scup gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size*. No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from October 1 through April 14, more than 2,000 lb (907 kg) from April 15 through June 15, or more than 200 lb (91 kg) of scup from June 16 through September 30, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not available for immediate use as defined in § 648.2.

(2) *Mesh-size measurement*. Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification*. The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater that 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction*. (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.124 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets*. The owner or operator of an otter trawl vessel retaining 1,000 lb (454 kg) or more of scup from October 1 through April 14, 2,000 lb (907 kg) or more of scup from April 15 through June 15, or 200 lb (90.7 kg) or more of scup from June 16 through September 30, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed and not available for immediate use as defined in § 648.2, and that can be shown not to have been in recent use, is considered to be not available for immediate use.

(6) *Roller gear*. The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to § 648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes*. The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set forth in paragraph (a)(6) of this section, may be changed following the procedures in § 648.122.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(iv) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in § 648.122.

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel's home port state.

[76 FR 60634, Sept. 29, 2011, as amended at 79 FR 52580, Sept. 4, 2014; 81 FR 51378, Aug. 4, 2016; 83 FR 17315, Apr. 19, 2018; 83 FR 64487, Dec. 17, 2018]

§ 648.126 Scup minimum fish sizes.

(a) *Moratorium (commercially) permitted vessels.* The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 9 inches (22.9 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.122.

[76 FR 60635, Sept. 29, 2011, as amended at 78 FR 37480, June 21, 2013; 79 FR 38264, July 7, 2014]

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a moratorium permit under § 648.4(a)(6), may possess scup year-round, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122.

[78 FR 37480, June 21, 2013]

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 50 scup in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3′ N. lat., may not be landed with the skin removed.

[76 FR 60635, Sept. 29, 2011, as amended at 77 FR 30431, May 23, 2012; 78 FR 37480, June 21, 2013; 80 FR 35258, June 19, 2015]

§ 648.129 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 222 and 223. In addition to the measures required under those parts, NMFS will investigate the extent of sea turtle takes in flynet gear and, if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

[76 FR 60635, Sept. 29, 2011]

§ 648.130 Scup framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

[76 FR 60635, Sept. 29, 2011, as amended at 80 FR 37196, June 30, 2015]

Subpart I—Management Measures for the Black Sea Bass Fishery

SOURCE: 61 FR 58467, Nov. 15, 1996, unless otherwise noted.

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) The Black Sea Bass Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

(2) *Periodicity*. The black sea bass commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review*. The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Black Sea Bass Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the black sea bass stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded but may be conducted in conjunction with such reviews.

[76 FR 60636, Sept. 29, 2011]

§ 648.141 Black sea bass Annual Catch Target (ACT).

(a) The Black Sea Bass Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Black Sea Bass Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Black Sea Bass Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1)–(3).

[76 FR 60636, Sept. 29, 2011]

§ 648.142 Black sea bass specifications.

(a) *Commercial quota, recreational landing limit, research set-aside, and other specification measures*. The Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming year or years will not be exceeded. The following measures are to be consisted by the Black Sea Bass Monitoring Committee:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed.

(2) A commercial quota, allocated annually.

(3) A commercial possession limit for all moratorium vessels, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

(4) Commercial minimum fish size.

(5) Minimum mesh size in the codend or throughout the net and the catch threshold that will require compliance with the minimum mesh requirement.

(6) Escape vent size.

(7) A recreational possession limit set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear other than otter trawls and pots or traps.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(13) Modification of the existing AM measures and ACT control rules utilized by the Black Sea Bass Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the MAFMC with respect to the measures necessary to assure that the ACLs are not exceeded. The MAFMC shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that sector ACLs are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the recreational sector ACL is not exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to ensure that recreational sector ACL is not exceeded.

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated on a coastwide basis.

(d) *Research quota.* See § 648.21(g).

[76 FR 60636, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37197, June 30, 2015]

§ 648.143 Black sea bass accountability measures.

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3′ N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters, will be counted against the quota by the state in which it is landed, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and

through the end of the calendar year, the EEZ north of 35°15.3′ N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the FEDERAL REGISTER advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3′ N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

(1) *Commercial ACL overage evaluation*. The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment*. Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(b) *Non-landing accountability measure*. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status*. If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding*. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above* B_{MSY}. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

(c) *Recreational ACL Evaluation*. The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013,

and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above B_{MSY}.* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

[76 FR 60636, Sept. 29, 2011, as amended at 78 FR 76764, Dec. 19, 2013; 83 FR 53827, Oct. 25, 2018]

§ 648.144 Black sea bass gear restrictions.

(a) *Trawl gear restrictions*—(1) *General.* (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5-inch (11.43-cm)

diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh throughout.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications*. No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net except that one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction*. (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets*. Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. Nets must be stowed and not available for immediate use as defined in § 648.2.

(5) *Roller gear*. Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions*—(1) *Gear marking*. The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wooden laths instead may have escape vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. These dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel*. (i) Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(C) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(ii) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted, provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

[76 FR 60637, Sept. 29, 2011, as amended at 79 FR 52583, Sept. 4, 2014]

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 15 black sea bass in, or harvested from, per trip the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 15 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

(b) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4) may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) tote.

[76 FR 60638, Sept. 29, 2011, as amended at 77 FR 30431, May 23, 2012; 78 FR 37480, June 21, 2013; 79 FR 38265, July 7, 2014; 80 FR 35259, June 19, 2015]

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[83 FR 64487, Dec. 17, 2018]

§ 648.147 Black sea bass minimum fish sizes.

(a) *Moratorium (commercially) permitted vessels*. The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.142.

(b) *Party/Charter permitted vessels and recreational fishery participants*. The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium

permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.

(c) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

[76 FR 60638, Sept. 29, 2011]

§ 648.148 Special management zones.

(a) *General.* The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the purpose of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure: An SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Greater Atlantic Regional Fisheries Office, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report.

(1) *Evaluation criteria.* In establishing an SMZ, the SMZ monitoring team will consider the following criteria:

(i) Fairness and equity;

(ii) Promotion of conservation;

(iii) Avoidance of excessive shares;

(iv) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;

(v) The natural bottom in and surrounding potential SMZs; and

(vi) Impacts on historical uses.

(2) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(3) The MAFMC, following review of the SMZ monitoring team's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that an SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(4) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the FEDERAL REGISTER in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(5) The proposed rule to establish an SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

(b) *Approved/Established SMZs*—(1) *Delaware Special Management Zone Areas.* Special management zones are established for Delaware artificial reef permit areas #9, 10, 11, and 13, in the area of the U.S. Exclusive Economic Zone. From January 1 through December 31 of each year, no person may fish in the Delaware Special Management Zones except by handline, rod and reel, or spear fishing (including the taking of fish by hand). The Delaware Special Management Zones are defined by rhumb lines connecting the following coordinates in the order stated:

(i) *Delaware artificial reef #9.*

Point	Corner	N Latitude	W Longitude
1	9SE	38°39.972′	74°59.298′
2	9SW	38°40.05′	75°0.702′
3	9NW	38°40.848′	75°0.402′
4	9NE	38°40.8′	74°58.902′
5	9SE	38°39.972′	74°59.298′

(ii) *Delaware artificial reef #10.*

Point	Corner	N Latitude	W Longitude
1	10SE	38°36.198′	74°55.674′
2	10SW	38°36.294′	74°57.15′
3	10NW	38°37.098′	74°56.802′
4	10NE	38°37.002′	74°55.374′
5	10SE	38°36.198′	74°55.674′

(iii) *Delaware artificial reef #11.*

Point	Corner	N Latitude	W Longitude
1	11SE	38°39.882′	74°43.05′
2	11SW	38°40.002′	74°44.802′
3	11NW	38°40.848′	74°44.502′
4	11NE	38°40.752′	74°42.75′
5	11SE	38°39.882′	74°43.05′

(iv) *Delaware artificial reef #13.*

Point	Corner	N Latitude	W Longitude
1	13SE	38°30.138′	74°30.582′
2	13SW	38°30.222′	74°31.5′
3	13NW	38°31.614′	74°30.864′
4	13NE	38°31.734′	74°30.018′
5	13SE	38°30.138′	74°30.582′

(2) *New Jersey Special Management Zone Areas.* Special management zones are established for New Jersey artificial reef permit areas, in the area of the U.S. Exclusive Economic Zone. From January 1 through December 31 of each year, no person may fish in the New Jersey Special Management Zones except by handline, rod and reel, or spear fishing (including the taking of fish by hand). The New Jersey Special Management Zones are defined by rhumb lines connecting the following coordinates in the order stated:

(i) *Sea Girt Reef Site.*

Point	N Latitude	W Longitude
NE Corner	40°08.22′	73°55.52′
ME Corner	40°07.30′	73°56.67′
SE Corner	40°06.13′	73°57.12′
SW Corner	40°06.17′	73°57.57′
MW Corner	40°07.48′	73°57.15′
NW Corner	40°08.63′	73°55.73′
NE Corner	40°08.22′	73°55.52′

(ii) *Garden State North Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°38.05′	74°00.70
SE Corner	39°37.05′	74°01.00′
SW Corner	39°37.00′	74°02.50′
NW Corner	39°37.98′	74°02.20′
NE Corner	39°38.05′	74°00.70′

(iii) *Garden State South Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°33.82′	74°05.75′
SE Corner	39°33.33′	74°05.85′
SW Corner	39°33.33′	74°07.35′
NW Corner	39°33.80′	74°07.20′
NE Corner	39°33.82′	74°05.75′

(iv) *Little Egg Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°29.00′	74°10.00′
SE Corner	39°28.00′	74°10.00′
SW Corner	39°28.00′	74°12.00′
NW Corner	39°29.00′	74°12.00′
NE Corner	39°29.00′	74°10.00′

(v) *Atlantic City Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°16.90′	74°15.28′
SE Corner	39°13.93′	74°11.80′
SW Corner	39°13.30′	74°12.70′
NW Corner	39°16.22′	74°16.18′
NE Corner	39°16.90′	74°15.28′

(vi) *Great Egg Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°15.00′	74°21.00′
SE Corner	39°14.00′	74°21.00′
SW Corner	39°14.00′	74°22.00′
NW Corner	39°15.00′	74°22.00′
NE Corner	39°15.00′	74°21.00′

(vii) *Ocean City Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°10.75′	74°32.45′
SE Corner	39°09.40′	74°34.62′
SW Corner	39°09.82′	74°34.97′
NW Corner	39°11.10′	74°32.85′
NE Corner	39°10.75′	74°32.45′

(viii) *Shark River Reef Site.*

Point	N Latitude	W Longitude
NE Corner	40°07.33′	73°41.08′
SE Corner	40°06.20′	73°41.08′
SW Corner	40°06.20′	73°41.80′
NW Corner	40°07.33′	73°41.80′
NE Corner	40°07.33′	73°41.08′

(ix) *Barnegat Light Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°45.87′	74°01.10′
SE Corner	39°44.62′	74°01.10′
SW Corner	39°44.62′	74°01.95′
NW Corner	39°45.87′	74°01.95′
NE Corner	39°45.87′	74°01.10′

(x) *Wildwood Reef Site.*

Point	N Latitude	W Longitude
NE Corner	38°57.85′	74°39.70′
SE Corner	38°56.58′	74°41.40′
SW Corner	38°57.55′	74°42.60′

Point	N Latitude	W Longitude
NW Corner	38°58.80′	74°40.90′
NE Corner	38°57.85′	74°39.70′

(xi) *Deepwater Reef Site.*

Point	N Latitude	W Longitude
NE Corner	38°59.00′	74°10.50′
SE Corner	38°58.00′	74°10.50′
SW Corner	38°58.00′	74°11.50′
NW Corner	38°59.00′	74°11.50′
NE Corner	38°59.00′	74°10.50′

(xii) *Cape May Reef Site.*

Point	N Latitude	W Longitude
NE Corner	38°53.45′	74°39.43′
SE Corner	38°50.07′	74°42.25′
SW Corner	38°50.67′	74°43.25′
NW Corner	38°53.97′	74°40.62′
NE Corner	38°53.45′	74°39.43′

(xiii) *Townsend Inlet Reef Site.*

Point	N Latitude	W Longitude
NE Corner	39°06.70′	74°36.00′
SE Corner	39°06.25′	74°36.00′
SW Corner	39°06.25′	74°37.50′
NW Corner	39°06.70′	74°37.50′
NE Corner	39°06.70′	74°36.00′

[80 FR 32485, June 9, 2015, as amended at 83 FR 31692, July 9, 2018]

§ 648.149 Black sea bass framework adjustments to management measures.

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* See § 648.110(a)(1).

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).

(b) [Reserved]

[76 FR 60639, Sept. 29, 2011]

Subpart J—Management Measures for the Atlantic Bluefish Fishery

SOURCE: 65 FR 45852, July 26, 2000, unless otherwise noted.

§ 648.160 Bluefish Annual Catch Limit (ACL).

(a) The Bluefish Monitoring Committee shall recommend to the MAFMC an ACL for the bluefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) *Periodicity.* The bluefish fishery ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60639, Sept. 29, 2011]

§ 648.161 Bluefish Annual Catch Targets (ACTs).

(a) The Bluefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the bluefish specification process. The Bluefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The sum of the commercial and recreational sector-specific ACTs shall be less than or equal to the

fishery level ACL. The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section. A total of 83 percent of the fishery-level ACT will be allocated to the recreational fishery. A total of 17 percent of the fishery-level ACT will be allocated to the commercial fishery.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.160(b)(1) through (3).

[76 FR 60639, Sept. 29, 2011]

§ 648.162 Bluefish specifications.

(a) *Recommended measures*. Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

(1) A fishery-level ACT;

(2) Research quota set from a range of 0 to 3 percent of TALs;

(3) Commercial minimum fish size;

(4) Minimum mesh size;

(5) Recreational possession limit set from a range of 0 to 20 bluefish;

(6) Recreational minimum fish size;

(7) Recreational season;

(8) Restrictions on gear other than otter trawls and gill nets;

(9) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and

(10) Modification of existing AM measures and ACT control rules utilized by the Bluefish Monitoring Committee.

(b) *TAL*—(1) *Recreational harvest limit*. If research quota is specified as described in paragraph (g) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota*. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (g) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(c) *Annual fishing measures*. The MAFMC's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the MAFMC measures necessary to ensure that the ACL will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER as soon as practicable, to implement an ACL, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the ACL will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER.

(d) *Distribution of annual commercial quota*. (1) The annual commercial quota

will be distributed to the states, based upon the following percentages; state each followed by its allocation in parentheses: ME (0.6685); NH (0.4145); MA (6.7167); RI (6.8081); CT (1.2663); NY (10.3851); NJ (14.8162) DE (1.8782); MD (3.0018); VA (11.8795); NC (32.0608); SC (0.0352); GA (0.0095); and FL (10.0597). Note: The sum of all state allocations does not add to 100 because of rounding.

(2) [Reserved]

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the FEDERAL REGISTER.

(f) Based upon any changes in the landings data available from the states for the base years 1981–89, the ASMFC and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(g) *Research quota.* See § 648.21(g).

[76 FR 60639, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37197, June 30, 2015]

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded.

(b) *Commercial sector EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if the Regional Administrator determines that the inaction of one or more states will cause the ACL specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a

state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the ACL to be exceeded.

(c) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

(1) *Commercial landings overage repayment.* All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year, irrespective of whether the fishery-level ACL is exceeded. If a state has increased or reduced quota through the transfer process described in § 648.162, then any overage will be measured against that state's final adjusted quota.

(2) If there is a quota overage at the end of the fishing year among states involved in the combination of quotas, the overage will be deducted from the following year's quota for each of the states involved in the combined quota, irrespective of whether the fishery-level ACL is exceeded. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in § 648.162(d)(1).

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the ACL has been exceeded.* If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the

ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient*. The payback coefficient is the difference between the most recent estimates of B_{MSY} and biomass (*i.e.*, $B_{MSY} - B$) divided by one-half of B_{MSY}.

(3) *If biomass is above B_{MSY}*. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred*. If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors. If the Bluefish Monitoring Committee determines that the ACL overage was not the result of the landings transfer, the recreational AMs described in paragraph (d) of this section will be implemented.

(f) *Non-landing AMs*. In the event that the ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the ACL was exceeded shall be deducted, as soon as possible, from a subsequent, single fishing year ACL.

(g) *State/Federal disconnect AM*. If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Bluefish Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

[76 FR 60640, Sept. 29, 2011, as amended at 78 FR 76765, Dec. 19, 2013]

§ 648.164 Bluefish possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

[76 FR 60641, Sept. 29, 2011]

§ 648.165 Bluefish minimum fish sizes.

If the MAFMC determines through its annual review or framework adjustment process that minimum fish sizes are necessary to ensure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.162(c) or 648.167.

[76 FR 60641, Sept. 29, 2011]

§ 648.166 Bluefish gear restrictions.

If the MAFMC determines through its annual review or framework adjustment process that gear restrictions are necessary to ensure that the ACL is not exceeded, or to attain other FMP objectives, such measures, subject to the gear other than trawls and gillnets restrictions in § 648.162 regarding specifications, will be enacted through the procedure specified in § 648.162(c) or 648.167.

[76 FR 60641, Sept. 29, 2011]

§ 648.167 Bluefish framework adjustment to management measures.

(a) *Within-season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will

be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[76 FR 60641, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37197, June 30, 2015]

Subpart K—Management Measures for the Atlantic Herring Fishery

SOURCE: 72 FR 11277, Mar. 12, 2007, unless otherwise noted.

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area), and river herring and shad catch caps, as specified in § 648.201(a)(4). Recommended specifications shall be presented to the New England Fishery Management Council.

(1) The PDT shall meet with the Commission's PRT to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/PRT will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/PRT or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) *Guidelines*. As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield (F_{MSY}). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and

Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on F_{MSY} or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock (F_{REB}), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (*i.e.*, MSY) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.

(6) River herring and shad catch caps may be allocated to the herring fishery by the following: Species, as defined in § 648.2, either separately or combined; area as specified in paragraph (f)(7) of this section; vessel permit; gear type; or any combination of these.

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the FEDERAL REGISTER proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective until they are revised through the specification process.

(e) *In-season adjustments.* The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) *Management areas.* The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

(1) *Management Area 1 (Gulf of Maine):* All U.S. waters of the Gulf of Maine (GOM) north of a line extending from a point at 41°39′ N. lat, 70°00′ W. long. to 42°53′ 14.32125″ N. lat., 67° 44′ 33.01613″ W. long., thence northerly along the U.S.-Canada Maritime Boundary to the U.S.-Canadian border, to include state and Federal waters adjacent to the states of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these

areas is described by the following coordinates:

Point	Latitude	Longitude	Note
1	41°58′ N	70° 00′ W	
2	42°38′ N	70° 00′ W	
3	42°53′ N	69° 40′ W	
4	43°12′ N	69° 00′ W	
5	43°40′ N	68° 00′ W	
6	43°58′16.0314″ N	67° 21′26.157″ W	(1)

[1] Point 6 falls on the U.S.-Canada Maritime Boundary.

(2) *Management Area 2 (South Coastal Area):* All state and Federal waters inclusive of sounds and bays, bounded on the east by 70°00′ W. long. and the outer limit of the U.S. Exclusive Economic Zone; bounded on the north and west by the southern coastline of Cape Cod, Massachusetts, and the coastlines of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33°48′46.37″ N. lat., 78°29′46.46″ W. long., and then heading due east along 33°48′46.37″ N. lat. to the outer limit of the US Exclusive Economic Zone.

(3) *Management Area 3 (Georges Bank):* All U.S. waters east of 70°00′ W. long. and southeast of the line that runs from a point at 41°39′ N. lat. and 70°00′ W. long., northeasterly to U.S.-Canada Maritime Boundary at 42°53′14.32125″ N. lat., 67°44′33.01613″ W. long.

(4) *River Herring Monitoring/Avoidance Areas*—(i) *January–February River Herring Monitoring/Avoidance Areas.* The January–February River Herring Monitoring/Avoidance Areas include four sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) January–February River Herring Monitoring/Avoidance Sub-Area 1.

Point	Latitude	Longitude
JF1A	43°00′ N	71°00′ W
JF1B	43°00′ N	70°30′ W
JF1C	42°30′ N	70°30′ W
JF1D	42°30′ N	71°00′ W
JF1A	43°00′ N	71°00′ W

(B) January–February River Herring Monitoring/Avoidance Sub-Area 2.

Point	Latitude	Longitude
JF2A	42°00′ N	70°00′ W
JF2B	42°00′ N	69°30′ W
JF2C	41°30′ N	69°30′ W
JF2D	41°30′ N	70°00′ W
JF2A	42°00′ N	70°00′ W

(C) January–February River Herring Monitoring/Avoidance Sub-Area 3.

Point	Latitude	Longitude	Note
JF3A	41°30′ N	72°00′ W	
JF3B	41°30′ N	71°00′ W	
JF3C	40°30′ N	71°00′ W	
JF3D	40°30′ N	72°30′ W	
JF3E	(1)	72°30′ W	(3)
JF3F	(2)	72°00′ W	(3)
JF3A	41°30′ N	72°00′ W	

[1] The southernmost shoreline of Long Island, New York.
[2] The north-facing shoreline of Long Island, New York.
[3] Points JF3E and JF3F are connected following the coastline of the south fork of eastern Long Island, New York.

(D) January–February River Herring Monitoring/Avoidance Sub-Area 4.

Point	Latitude	Longitude	Note
JF4A	40°30′ N	74°00′ W	
JF4B	40°30′ N	72°30′ W	
JF4C	40°00′ N	72°30′ W	
JF4D	40°00′ N	72°00′ W	
JF4E	39°30′ N	72°00′ W	
JF4F	39°30′ N	73°30′ W	
JF4G	40°00′ N	73°30′ W	
JF4H	40°00′ N	74°00′ W	(1)
JF4A	40°30′ N	74°00′ W	(1)

[1] Points JF4H and JF4A are connected following 74 °W longitude and the easternmost shoreline of New Jersey, whichever is furthest east.

(ii) *March–April River Herring Monitoring/Avoidance Areas.* The March–April River Herring Monitoring/Avoidance Areas include five sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) March–April River Herring Monitoring/Avoidance Sub-Area 1.

Point	Latitude	Longitude
MA1A	43°00′ N	71°00′ W
MA1B	43°00′ N	70°30′ W
MA1C	42°30′ N	70°30′ W
MA1D	42°30′ N	71°00′ W
MA1A	43°00′ N	71°00′ W

(B) March–April River Herring Monitoring/Avoidance Sub-Area 2.

Point	Latitude	Longitude
MA2A	42°00′ N	70°00′ W

Point	Latitude	Longitude
MA2B	42°00′ N	69°30′ W
MA2C	41°30′ N	69°30′ W
MA2D	41°30′ N	70°00′ W
MA2A	42°00′ N	70°00′ W

(C) March–April River Herring Monitoring/Avoidance Sub-Area 3.

Point	Latitude	Longitude	Note
MA3A	41°00′ N	(1)	
MA3B	41°00′ N	71°00′ W	
MA3C	40°30′ N	71°00′ W	
MA3D	40°30′ N	71°30′ W	
MA3E	40°00′ N	71°30′ W	
MA3F	40°00′ N	72°30′ W	
MA3G	(2)	72°30′ W	(3)
MA3A	41°00′ N	(1)	(3)

[1] The easternmost shoreline of Long Island, New York.
[2] The southernmost shoreline of Long Island, New York.
[3] Points MA3G and MA3A are connected following the southern shoreline of Long Island, New York.

(D) March–April River Herring Monitoring/Avoidance Sub-Area 4.

Point	Latitude	Longitude
MA4A	40°00′ N	73°30′ W
MA4B	40°00′ N	72°30′ W
MA4C	39°00′ N	72°30′ W
MA4D	39°00′ N	73°30′ W
MA4A	40°00′ N	73°30′ W

(E) March–April River Herring Monitoring/Avoidance Sub-Area 5.

Point	Latitude	Longitude	Note
MA5A	40°30′ N	74°00′ W	
MA5B	40°30′ N	73°30′ W	
MA5C	40°00′ N	73°30′ W	
MA5D	40°00′ N	74°00′ W	(1)
MA5A	40°30′ N	74°00′ W	(1)

[1] Points MA5D and MA5A are connected following 74 °W longitude and the easternmost shoreline of New Jersey, whichever is furthest east.

(iii) *May–June River Herring Monitoring/Avoidance Areas.* The May–June River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) May–June River Herring Monitoring/Avoidance Sub-Area 1.

Point	Latitude	Longitude
MJ1A	44°00′ N	69°30′ W
MJ1B	44°00′ N	69°00′ W
MJ1C	43°30′ N	69°00′ W
MJ1D	43°30′ N	69°30′ W
MJ1A	44°00′ N	69°30′ W

(B) May–June River Herring Monitoring/Avoidance Sub-Area 2.

Point	Latitude	Longitude
MJ2A	42°00′ N	70°00′ W
MJ2B	42°00′ N	69°30′ W
MJ2C	41°30′ N	69°30′ W
MJ2D	41°30′ N	70°00′ W
MJ2A	42°00′ N	70°00′ W

(iv) *July–August River Herring Monitoring/Avoidance Areas.* The July–August River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) July–August River Herring Monitoring/Avoidance Sub-Area 1.

Point	Latitude	Longitude	Note
JA1A	44°00′ N	70°00′ W	
JA1B	44°00′ N	69°30′ W	
JA1C	43°00′ N	69°30′ W	
JA1D	43°00′ N	70°00′ W	(1)
JA1A	44°00′ N	70°00′ W	(1)

[1] The boundary from Points JA1D to JA1A excludes the portions Maquoit Bay and Middle Bay (Brunswick, ME) east of 70°00′ W.

(B) July–August River Herring Monitoring/Avoidance Sub-Area 2.

Point	Latitude	Longitude
JA2A	44°00′ N	69°00′ W
JA2B	44°00′ N	68°30′ W
JA2C	43°30′ N	68°30′ W
JA2D	43°30′ N	69°00′ W
JA2A	44°00′ N	69°00′ W

(v) *September–October River Herring Monitoring/Avoidance Areas.* The September–October River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September–October River Herring Monitoring/Avoidance Sub-Area 1.

Point	Latitude	Longitude	Note
SO1A	44°30′ N	68°00′ W	
SO1B	44°30′ N	(1)	(2)
SO1C	44°00′ N	(3)	(2)
SO1D	44°00′ N	68°00′ W	
SO1A	44°30′ N	68°00′ W	

[1] The intersection of 44°30′ N and the U.S.-Canada Maritime Boundary.
[2] Point SO1B and Point SO1C are connected along the U.S.-Canada Maritime Boundary.
[3] The intersection of 44°00′ N and the U.S.-Canada Maritime Boundary.

(B) September–October River Herring Monitoring/Avoidance Sub-Area 2.

Point	Latitude	Longitude
SO2A	43°00′ N	71°00′ W
SO2B	43°00′ N	70°30′ W
SO2C	42°30′ N	70°30′ W
SO2D	42°30′ N	71°00′ W
SO2A	43°00′ N	71°00′ W

(vi) *November–December River Herring Monitoring/Avoidance Areas.* The November–December River Herring Monitoring/Avoidance Areas include two sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November–December River Herring Monitoring/Avoidance Sub-Area 1.

Point	Latitude	Longitude	Note
ND1A	43°00′ N	71°00′ W	
ND1B	43°00′ N	70°00′ W	
ND1C	42°00′ N	70°00′ W	
ND1D	42°00′ N	69°30′ W	
ND1E	41°30′ N	69°30′ W	
ND1F	41°30′ N	70°00′ W	
ND1G	(1)	70°00′ W	(3)
ND1H	42°00′ N	(2)	(3)
ND1I	42°00′ N	70°30′ W	
ND1J	42°30′ N	70°30′ W	
ND1K	42°30′ N	71°00′ W	
ND1A	43°00′ N	71°00′ W	

[1] The south-facing shoreline of Cape Cod, Massachusetts.
[2] The west-facing shoreline of Cape Cod, Massachusetts.
[3] Point ND1G and ND1H are connected following the coastline of Cape Cod, Massachusetts.

(B) November–December River Herring Monitoring/Avoidance Sub-Area 2.

Point	Latitude	Longitude
ND2A	41°30′ N	72°00′ W
ND2B	41°30′ N	70°00′ W
ND2C	40°30′ N	70°00′ W
ND2D	40°30′ N	70°30′ W
ND2E	41°00′ N	70°30′ W
ND2F	41°00′ N	72°00′ W
ND2A	41°30′ N	72°00′ W

(5) *Gulf of Maine Modified Haddock Stock Area.* The Gulf of Maine Modified Haddock Stock Area is composed of the portions of Greater Atlantic Region Statistical Areas #464, #465, #511, #512, #513, #514, and #515 in U.S. waters, and is defined by the following points connected in the order listed by straight lines unless otherwise noted:

Point	Latitude	Longitude	Note
A	(1)	67°00′ W	
B	(2)	67°00′ W	(3)
C	42°20′ N	(4)	(3)
D	42°20′ N	70°00′ W	
E	(5)	70°00′ W	(6)
A	(1)	67°00′ W	(6)

[1] The intersection of 67°00′ W longitude and the southern coast of Maine.
[2] The intersection of 67°00′ W longitude and the U.S.-Canada Maritime Boundary.
[3] From POINT B to POINT C along the U.S.-Canada Maritime Boundary.
[4] The intersection of 42°20′ N latitude and the U.S.-Canada Maritime Boundary.
[5] The intersection of 70°00′ W longitude and the northeast-facing shoreline of Cape Cod, Massachusetts.
[6] From POINT E back to POINT A along the coastline of the United States.

(6) *Georges Bank Modified Haddock Stock Area.* The Georges Bank Modified Haddock Stock Area is composed of Greater Atlantic Region Statistical Areas #521, #522, #525, #526, #561, and #562, and is defined by the following points connected in the order listed by straight lines unless otherwise noted:

Point	Latitude	Longitude	Note
A	42°20′ N	70°00′ W	
B	42°20′ N	(1)	(2)
C	40°30′ N	(3)	(2)
D	40°30′ N	66°40′ W	
E	39°50′ N	66°40′ W	
F	39°50′ N	70°00′ W	(4)
A	42°20′ N	70°00′ W	(4)

[1] The intersection of 42°20′ N latitude and the U.S.-Canada Maritime Boundary.
[2] From POINT B to POINT C following the U.S.-Canada Maritime Boundary.
[3] The intersection of 40°30′ N latitude and the U.S.-Canada Maritime Boundary.
[4] From POINT F back to POINT A along 70°00′ W longitude and the coastlines of Nantucket Island and mainland Cape Cod, Massachusetts, whichever is further east.

(7) *River herring and shad catch cap areas*—(i) *Gulf of Maine Catch Cap Area.* The Gulf of Maine Catch Cap Area is composed of the portions of Greater Atlantic Region Statistical Areas #464, #465, #467, #511, #512, #513, #514, and #515 in U.S. waters. The Gulf of Maine Catch Cap Area is bounded on the west by the coastline of the United States, bounded on the east by the U.S.-Canada Maritime Boundary, and bounded on the south by the following coordinates connected by straight lines in the order listed:

Point	Latitude	Longitude
A	(1)	70°00′ W
B	42°20′ N	70°00′ W
C	42°20′ N	(2)

[1] The intersection of 70°00′ W longitude and the northwest facing shoreline of Cape Cod, Massachusetts
[2] The intersection of 42°00′ N latitude and the U.S.-Canada Maritime Boundary.

(ii) *Cape Cod Catch Cap Area.* The Cape Cod Catch Cap Area is composed of Greater Atlantic Region Statistical

Area #521, and is defined by the following points connected in the order listed by straight lines unless otherwise noted:

Point	Latitude	Longitude	Note
A	(1)	70°00′ W	
B	42°20′ N	70°00′ W	
C	42°20′ N	68°50′ W	
D	41°00′ N	68°50′ W	
E	41°00′ N	69°30′ W	
F	41°10′ N	69°30′ W	
G	41°10′ N	69°50′ W	
H	41°20′ N	69°50′ W	
I	41°20′ N	(2)	(3)
J	(4)	70°00′ W	(3)
K	(5)	70°00′ W	(6)
A	(1)	70°00′ W	(6)

[1] The intersection of 70°00′ W longitude and the northeast-facing shoreline of Cape Cod, Massachusetts
[2] The intersection of 41°20′ N latitude and the northeast-facing shoreline of Nantucket Island.
[3] From Point I to Point J along the northeast-facing shoreline of Nantucket Island.
[4] The intersection of 70°00′ W longitude and the northeast-facing shoreline of Nantucket Island.
[5] The intersection of 70°00′ W longitude and the south-facing shoreline of mainland Cape Cod, Massachusetts.
[6] From Point K back to Point A along the east-facing shoreline of Cape Cod, Massachusetts.

(iii) *Georges Bank Catch Cap Area*. The Georges Bank Catch Cap Area is composed of the portions of Greater Atlantic Region Statistical Areas #522, #525, #526, #541, #542, #543, #561, #562, and #640 in U.S. waters, and is defined by the following points, connected in the order listed by straight lines unless otherwise noted:

Point	Latitude	Longitude	Note
A	(1)	70°00′ W	
B	(2)	70°00′ W	(3)
C	41°20′ N	(4)	(3)
D	41°20′ N	69°50′ W	
E	41°10′ N	69°50′ W	
F	41°10′ N	69°30′ W	
G	41°00′ N	69°30′ W	
H	41°00′ N	68°50′ W	
I	42°20′ N	68°50′ W	
J	42°20′ N	(5)	(6)
A	(1)	70°00′ W	(6)

[1] The intersection of 70°00′ W longitude and the outer limit of the U.S. Exclusive Economic Zone.
[2] The intersection of 70°00′ W longitude and the south-facing shoreline of Nantucket Island.
[3] From Point B to Point C along the south- and east-facing shorelines of Nantucket Island.
[4] The intersection of 41°20′ N latitude and the northeast-facing shoreline of Nantucket Island.
[5] The intersection of 42°20′ N latitude and the U.S.-Canada Maritime Boundary.
[6] From Point J back to Point A along the U.S.-Canada Maritime Boundary and the outer limit of the U.S. Exclusive Economic Zone.

(iv) *Southern New England/Mid-Atlantic Catch Cap Area*. The coordinates of this area are the same as Management Area 2 (South Coastal Area), as specified in paragraph (f)(2) of this section.

(8) *River herring and shad catch cap closure areas—(i) Gulf of Maine Catch Cap Closure Area*. The coordinates of this area are the same as the Gulf of Maine Catch Cap Area, as specified in paragraph (f)(7)(i) of this section.

(ii) *Cape Cod Catch Cap Closure Area*. The coordinates of this area are the same as the Cape Cod Catch Cap Area, as specified in paragraph (f)(7)(ii) of this section.

(iii) *Georges Bank Catch Cap Closure Area*. The coordinates of this area are the same as the Georges Bank Catch Cap Area, as specified in paragraph (f)(7)(iii) of this section.

(iv) *Southern New England/Mid-Atlantic Catch Cap Closure Area*. The Southern New England/Mid-Atlantic Catch Cap Closure Area is composed of the portions of Greater Atlantic Region Statistical Areas #537, #538, #539, #611, #612, #613, #614, #615, #616, #621, #622, #623, #625, #626, #627, #631, #632, #635, and #636 in US waters, and is defined by the following coordinates, connected by straight lines in the order listed unless otherwise noted:

Point	Latitude	Longitude	Note
A	35°00′ N	(1)	
B	35°00′ N	74°00′ W	
C	37°00′ N	74°00′ W	
D	37°00′ N	73°00′ W	
E	38°00′ N	73°00′ W	
F	38°00′ N	72°00′ W	
G	39°00′ N	72°00′ W	
H	39°00′ N	71°40′ W	
I	39°50′ N	71°40′ W	
J	39°50′ N	70°00′ W	
K	(2)	70°00′ W	(3)
A	35°00′ N	(1)	(3)

[1] The intersection of 35°00′ N latitude and the mainland shoreline of North Carolina.
[2] The intersection of 70°00′ W longitude and the south-facing shoreline of mainland Cape Cod, Massachusetts.
[3] From Point K back to Point A along the mainland shoreline of the United States.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;

(2) Possession limits;

(3) River Herring Monitoring/Avoidance Areas; and

(4) River herring and shad catch caps.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008; 76 FR 11379, Mar. 2, 2011; 76 FR 81850, Dec. 29, 2011; 79 FR 8815, Feb. 13, 2014; 79 FR 71968, Dec. 4, 2014; 80 FR 37197, June 30, 2015; 81 FR 19054, Apr. 4, 2016]

§ 648.201 AMs and harvest controls.

(a) *AMs*—(1) *Herring sub-ACLs and ACL*—(i) *Management area closure.* If NMFS projects that catch will reach 92 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 92 percent of the Area 1A or Area 1B sub-ACL allocated to a seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 92 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in sect; 648.90(a)(4)(iii)(D) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, *i.e.*, the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(*2*) and (*3*) of this part, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, and from landing herring more than once per calendar day, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel's gear is not available for immediate use as defined in § 648.2 while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

(3) *ACL overage deduction.* If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through notification in the FEDERAL REGISTER, prior to the start of the fishing year, if possible, during which the reduction would occur.

(4) *River herring and shad catch cap.* (i) The catch from all trips that land more than 6,600 lb (3 mt) of herring shall apply to the river herring and shad catch cap in the herring fishery. Caps by gear and by area shall be established through the specifications process described in § 648.201.

(ii) Beginning on the date that NMFS projects that river herring and shad catch will reach 95 percent of a catch cap for specified gear applicable to an area specified in § 648.200(f)(7) for the remainder of the fishing year, NMFS shall prohibit vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of Atlantic herring per trip using the applicable gear in the applicable catch cap closure area, specified in § 648.200(f)(8), and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit

specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) *Seasonal sub-ACL periods.* The sub-ACL for each herring management area may be divided into seasonal periods by month. Seasonal sub-ACLs for herring management areas, including the specification of the seasonal periods, shall be set through the annual specification process described at § 648.200. The seasonal allocation of sub-ACLs are as follows:

(1) *Area 1A:* Zero percent available for harvest during January–May; 100 percent available for harvest during June–December.

(2) *Area 1B:* Zero percent available for harvest during January–April; 100 percent available for harvest during May–December.

(3) *Area 2:* 100 percent available for harvest during January–December.

(4) *Area 3:* 100 percent available for harvest during January–December.

(e) A vessel may transit an area that has zero percent sub-ACL available for harvest specified in paragraph (d) of this section with herring on board, provided such herring were caught in an area or areas with sub-ACL available specified in paragraph (d) of this section, that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit that authorizes the amount of herring on board for the area where the herring was harvested.

(f) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 67°16.8′ W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(g) *Carryover.* Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

(h) If NMFS determines that the New Brunswick weir fishery landed less than 4,000 mt through October 1, NMFS will allocate an additional 1,000 mt to the stockwide ACL and Area 1A sub-ACL. NMFS will notify the Council of

this adjustment and publish the adjustment in the FEDERAL REGISTER.

[76 FR 11380, Mar. 2, 2011, as amended at 76 FR 56999, Sept. 15, 2011; 78 FR 26169, May 3, 2013; 78 FR 61837, Oct. 4, 2013; 79 FR 52580, Sept. 4, 2014; 79 FR 71971, Dec. 4, 2014; 81 FR 19054, Apr. 4, 2016; 81 FR 75739, Nov. 1, 2016]

§ 648.202 Season and area restrictions.

(a) *Purse Seine/Fixed Gear Only Area.* Vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A limited access herring vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 – May 31.

(b) *Fishing in Northeast Multispecies Closed Areas.* (1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed Areas, including Cashes Ledge Closure Area, Western GOM Closure Area, Closed Area I North (February 1–April 15), and Closed Area II, as defined in § 648.81(a)(3), (4), and (5) and (c)(3) and (4), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard a NMFS-certified observer.

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may slip or operationally discard catch, as defined at § 648.2, except in the following circumstances:

(i) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(ii) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

(iii) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(3) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board.

(4) If catch is slipped or operational discarded by a vessel, the vessel operator must:

(i) Stop fishing and immediately exit the Closed Areas. Once the vessel has exited the Closed Areas, it may continue to fish, but may not fish inside the Closed Areas for the remainder of that trip.

(ii) Complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) Report slippage events on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch if the vessel was issued a limited access herring permit.

(iv) Comply with the measures to address slippage specified in § 648.11(m)(4)(iv) and (v) if the vessel was issued an All Areas or Areas 2/3 Limited Access Herring Permit.

[72 FR 11277, Mar. 12, 2007, as amended at 79 FR 8816, Feb. 13, 2014; 79 FR 52580, Sept. 4, 2014; 81 FR 19054, Apr. 4, 2016; 83 FR 15275, Apr. 9, 2018]

§ 648.203 Gear restrictions.

(a) Midwater trawl gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the midwater trawl gear exemption requirements specified under the NE multispecies regulations at § 648.80(d), including issuance of a Letter of Authorization.

(b) Purse seine gear may only be used by a vessel issued a valid herring permit in the GOM/GB Exemption Area as defined in § 648.80(a)(17), provided it complies with the purse seine exemption requirements specified under the NE multispecies requirements at

§ 648.80(e), including issuance of a Letter of Authorization.

[72 FR 11277, Mar. 12, 2007, as amended at 83 FR 15275, Apr. 9, 2018]

§ 648.204 Possession restrictions.

(a) A vessel must be issued and possess a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided none of the harvest restrictions specified in § 648.201 has been implemented.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3, as defined in § 648.200(f), provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to, but no more than, 55,000 lb (25 mt) of Atlantic herring in any calendar day, and is limited to one landing of herring per calendar day, from any management area defined in § 648.200(f), provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(4) A vessel issued an All Areas Open Access Permit may fish for, possess, or land up to, but no more than, 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip, and is limited to one landing of herring per calendar day, provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(5) A vessel issued an Areas 2/3 Open Access Permit may fish for, possess, or land up to, but no more than, 20,000 lb (9 mt) of Atlantic herring from only Area 2 or Area 3, as defined in § 648.200(f), per trip, and is limited to one landing of herring per calendar day, provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(6) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

(b) Each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a valid herring permit to fish for, possess, or land Atlantic herring and are subject to the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively.

[72 FR 11277, Mar. 12, 2007, as amended at 76 FR 11380, Mar. 2, 2011; 79 FR 8816, Feb. 13, 2014; 79 FR 71972, Dec. 4, 2014]

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel or vessel issued an Areas 2/3 Open Access Permit, with the exception of fixed gear fishermen, must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS. (See § 648.10(m) for VMS notification requirements.)

[79 FR 8816, Feb. 13, 2014]

§ 648.206 Framework provisions.

(a) *Framework adjustment process.* In response to the triennial review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Herring FMP, or to address gear conflicts as defined under § 600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the

Council shall develop and analyze appropriate management measures over the span of at least two Council meetings. The Council may delegate authority to the Herring Oversight Committee to conduct an initial review of the options being considered. The Oversight Committee shall review the options and relevant information, consider public comment, and make a recommendation to the Council.

(2) After the first framework meeting, the Council may refer the issue back to the Herring Oversight Committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council shall identify, at this meeting, a preferred alternative and/or identify the possible alternatives.

(3) A framework document shall be prepared that discusses and shows the impacts of the alternatives. It shall be available to the public prior to the second or final framework meeting.

(4) After developing management actions and receiving public testimony, the Council shall make a recommendation to NMFS. The Council's recommendation must include supporting rationale and, if changes to the management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(5) If the Council's recommendation to NMFS includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information NMFS may:

(i) Concur with the Council's recommended management measures and determine that the recommended management measures should be published as a final rule in the FEDERAL REGISTER based on the factors specified in paragraphs (c)(4)(i)-(iv) of this section.

(ii) Concur with the Council's recommendation and determine that the recommended management measures should be first published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Council's recommendation, the measures shall be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Council shall be notified in writing of the reasons for the non-concurrence.

(b) Possible framework adjustment measures. Measures that may be changed or implemented through framework action include:

(1) Management area boundaries or additional management areas;

(2) Size, timing, or location of new or existing spawning area closures;

(3) Closed areas other than spawning closures;

(4) Restrictions in the amount of fishing time;

(5) A days-at-sea system;

(6) Adjustments to specifications;

(7) Adjustments to the Canadian catch deducted when determining specifications;

(8) Distribution of the ACL;

(9) Gear restrictions (such as mesh size, etc.) or requirements (such as bycatch-reduction devices, etc.);

(10) Vessel size or horsepower restrictions;

(11) Closed seasons;

(12) Minimum fish size;

(13) Trip limits;

(14) Seasonal, area, or industry sector quotas;

(15) Measures to describe and identify essential fish habitat (EFH), fishing gear management measures to protect EFH, and designation of habitat areas of particular concern within EFH;

(16) Measures to facilitate aquaculture, such as minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other measures included in the FMP;

(17) Changes to the overfishing definition;

(18) Vessel monitoring system requirements;

(19) Limits or restrictions on the harvest of herring for specific uses;

(20) Quota monitoring tools, such as vessel, operator, or dealer reporting requirements;

(21) Permit and vessel upgrading restrictions;

(22) Implementation of measures to reduce gear conflicts, such as mandatory monitoring of a radio channel by fishing vessels, gear location reporting by fixed gear fishermen, mandatory plotting of gear by mobile fishermen, standards of operation when conflict occurs, fixed gear marking or setting practices; gear restrictions for certain areas, vessel monitoring systems, restrictions on the maximum number of fishing vessels, and special permitting conditions;

(23) Limited entry or controlled access system;

(24) Specification of the amount of herring to be used for roe

(25) In-season adjustments to ACLs;

(26) Measures to address bycatch and bycatch monitoring;

(27) Requirements for a herring processor survey;

(28) ACL set-aside amounts, provisions, adjustments;

(29) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

(30) AMs;

(31) Changes to vessel trip notification and declaration requirements;

(32) Adjustments to measures to address slippage, including sampling requirements;

(33) River Herring Monitoring/Avoidance Areas;

(34) Provisions for river herring catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring catch in a particular area(s); the threshold for river herring catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s).

(35) Changes to criteria/provisions for access to Northeast Multispecies Closed Areas;

(36) River herring and shad catch caps, including species-specific caps, and vessels, permits, trips, gears, and areas to which caps apply;

(37) River herring and shad Catch Cap Areas and Catch Cap Closure Areas; and

(38) Any other measure currently included in the FMP.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[72 FR 11277, Mar. 12, 2007, as amended at 73 FR 4757, Jan. 28, 2008; 76 FR 11380, Mar. 2, 2011; 76 FR 81850, Dec. 29, 2011; 79 FR 8817, Feb. 13, 2014; 79 FR 71972, Dec. 4, 2014; 80 FR 37197, June 30, 2015]

§ 648.207 Herring Research Set-Aside (RSA).

(a) NMFS shall publish a Request for Proposals (RFP) in the FEDERAL REGISTER, consistent with procedures and requirements established by NMFS, to solicit proposals from industry for the

upcoming 3 fishing years, based on research priorities identified by the Council.

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives, the relationship of the proposed research to herring research priorities and/or management needs, project design, participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall convene a review panel, including technical experts, to review proposals submitted in response to the RFP. Each panel member shall recommend which research proposals should be authorized to utilize RSA, based on the selection criteria described in the RFP.

(d) NMFS shall consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(e) The grant awards approved under the RFPs shall be for the upcoming 3 fishing years, unless the Council identifies new/different research priorities during the interim years and decides to publish a second RFP. Proposals to fund research that would start prior to, or that would end after the fishing year, are not eligible for consideration. The RSA must be utilized in the same fishing year in which it was distributed (i.e., RSA and compensation trips cannot be rolled over into future years). However, the money generated from the RSA may be rolled over into, or used to fund research in future years, consistent with the multi-year proposal.

(f) Whenever possible, research proposals shall be reviewed and approved prior to the publication of final quota specifications for the upcoming fishing years. In the event that the approved proposals do not make use of any or all of the set-asides, the unutilized portion of the set-aside shall be reallocated back to its respective management area(s) when the final specifications are published. If there is unutilized set-aside available, NMFS, at the request of the Council, could publish another RFP for either the second or third years of the 3-year specifications. In this case, NMFS shall release the unutilized portion of the RSA back to its respective management area(s) for the first year of the specifications and any other year that yields unutilized set-aside after an additional RFP is published. The Council also may decide not to publish another RFP, in which case NMFS may release the unutilized portion of the set-aside back to its respective management area(s) for all 3 fishing years covered by the specifications.

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL, in accordance with the APA, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

(h) Any RSA reallocated under paragraphs (f) and (g) of this section may not be used solely as compensation for research.

(i) Researchers may apply for the use of more than one herring RAS allocation for individual research projects, and may request that the set-aside be collected separately from the research trip or as part of the research trip. The research compensation trips do not necessarily have to be conducted by the same vessel, but must be conducted in the management area from which the set-aside was derived.

(j) No more than 50 percent of the allocated set-aside may be taken before the research begins. If a research project is terminated for any reason prior to completion, any funds collected from the catch sold to pay for research expenses must be refunded to U.S. Treasury.

(k) NMFS shall provide authorization of the research activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional

Administrator, which must be kept on board the vessel.

(l) Upon completion of herring research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the herring research.

[72 FR 11277, Mar. 12, 2007, as amended at 76 FR 11381, Mar. 2, 2011]

Subpart L—Management Measures for the Spiny Dogfish Fishery

SOURCE: 65 FR 1570, Jan. 11, 2000, unless otherwise noted.

§ 648.230 Spiny dogfish Annual Catch Limits (ACLs).

(a) The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee, an ACL for the commercial spiny dogfish fishery, which shall equal to the domestic ABC (*i.e.*, the ABC minus Canadian catch) recommended by the SSC as specified in § 648.20.

(1) *Periodicity*. The spiny dogfish ACL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(2) [Reserved]

(b) *Performance review*. The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If an ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Spiny Dogfish Monitoring Committee will review fishery performance information and make recommendations to the Councils for changes in measures intended to ensure ACLs are not exceeded as frequently.

(2) The Councils may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the spiny dogfish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[76 FR 60642, Sept. 29, 2011]

§ 648.231 Spiny dogfish Annual Catch Target (ACT) and Total Allowable Level of Landings (TAL).

(a) The Spiny Dogfish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT and a TAL for the fishery as part of the spiny dogfish specification process specified in § 648.232. The Spiny Dogfish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, domestic commercial and recreational discards, and any additional relevant information considered in the ACT and TAL recommendation process.

(1) The ACT shall be identified as less than or equal to the ACL.

(2) The Spiny Dogfish Monitoring Committee shall recommend a TAL to the Joint Spiny Dogfish Committee, which accounts for domestic commercial and recreational discards (ACT minus domestic dead discards). The TAL is equivalent to the annual coastwide commercial quota.

(b) *Periodicity*. The TAL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(c) *Performance review*. The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to TALs in conjunction with any ACL performance review, as outlined in § 648.230(b).

[76 FR 60642, Sept. 29, 2011]

§ 648.232 Spiny dogfish specifications.

(a) *Commercial quota and other specification measures*. The Spiny Dogfish

Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (i.e., annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (8) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. If research quota is specified as described in paragraph (f) of this section, the effective commercial quota will be those commercial landings available after the deduction for the research quota. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits;

(5) Research quota set from a range of 0 to 3 percent of the commercial quota;

(6) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

(7) Other gear restrictions; and

(8) Changes to AMs and ACT control rules.

(b) *Joint Spiny Dogfish Committee recommendation.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations, requests for research quota, and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (8) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years.

(c) *Council recommendations.* (1) The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a TAL and other measures necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils.

(2) After such review, NMFS shall publish a proposed rule in the FEDERAL REGISTER specifying a TAL, adjustments to ACL, ACT, and TAL resulting from the accountability measures specified in § 648.233, and other measures necessary to ensure that the ACL will not be exceeded in any fishing year, for a period of 1–5 fishing years. After considering public comments, NMFS shall publish a final rule in the FEDERAL REGISTER to implement the TAL and other measures.

(3) If the annual specifications are not published in the FEDERAL REGISTER prior to the start of the fishing year, the previous year's annual specifications will remain in effect. The previous year's specifications will be replaced by the current year's specifications as of the effective date of the final rule implementing the current year's specifications.

(d) [Reserved]

(e) *Landings applied against the commercial quota.* All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the annual coastwide commercial quota, regardless of where the spiny dogfish were harvested.

(f) *Research quota.* See § 648.22(g).

[76 FR 60642, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 79 FR 41143, July 15, 2014; 80 FR 37197, June 30, 2015]

§ 648.233 Spiny dogfish Accountability Measures (AMs).

(a) *Commercial EEZ closure*. The Regional Administrator shall determine the date by which the annual coastwide quota described in § 648.232 will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of the fishing year by publishing notification in the FEDERAL REGISTER. Upon the closure date, and for the remainder of the fishing year, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

(b) *ACL overage evaluation*. The ACL will be evaluated based on a single-year examination of total catch (including both landings and dead discards) to determine if the ACL has been exceeded.

(c) *Overage repayment*. In the event that the ACL has been exceeded in a given fishing year, the exact amount in pounds by which the ACL was exceeded shall be deducted, as soon as possible from a subsequent single fishing year ACL.

[76 FR 60643, Sept. 29, 2011, as amended at 79 FR 41144, July 15, 2014]

§ 648.234 Gear restrictions. [Reserved]

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) *Possession limit*. Vessels issued a valid Federal spiny dogfish permit under § 648.4(a)(11) may:

(1) Possess up to 6,000 lb (2,722 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

[76 FR 60643, Sept. 29, 2011, as amended at 78 FR 25864, May 3, 2013; 79 FR 41144, July 15, 2014; 79 FR 46378, Aug. 8, 2014; 81 FR 53960, Aug. 15, 2016]

§ 648.236 Special Management Zones. [Reserved]

§§ 648.237–648.238 [Reserved]

§ 648.239 Spiny dogfish framework adjustments to management measures.

(a) *Within season management action*. The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process*. After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split

seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *Councils' recommendation*. After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule;

(3) *NMFS action*. If the Councils' recommendation includes adjustments or additions to management measures, then:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[76 FR 60643, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37197, June 30, 2015]

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

SOURCE: 67 FR 63233, Oct. 10, 2002, unless otherwise noted.

§ 648.260 Specifications.

(a) *Annual review and specifications process*. The Council, the Red Crab Plan Development Team (PDT), and the Red Crab Advisory Panel shall monitor the status of the red crab fishery and resource.

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(2) If new and/or additional information becomes available, the Red Crab PDT shall consider it during this annual review. Based on this review, the Red Crab PDT shall provide guidance to the Red Crab Committee and the Council regarding the need to adjust measures in the Red Crab FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.261, or through an amendment to the FMP.

(3) Based on the annual review, described above, and/or the SAFE Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Red Crab PDT shall recommend to the Red Crab Committee and Council the following specifications for harvest of red crab: an annual catch limit (ACL) set less than or equal to ABC; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each red crab fishing year, specified for a period of up to 3 fishing years.

(4) The PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(5) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the SSC, and any other relevant information, the Red Crab PDT may also recommend to the Red Crab Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of red crab. These adjustments may be included in the Council's specifications for the red crab fishery.

(6) *Council recommendation*—(i) The Council shall review the recommendations of the Red Crab PDT, Red Crab Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(ii) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(iii) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(iv) If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *SAFE Report.* (1) The Red Crab PDT shall prepare a SAFE Report at least every 3 yr. Based on the SAFE Report, the Red Crab PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the red crab fishery. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Red Crab PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

[76 FR 60383, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37198, June 30, 2015]

§ 648.261 Framework adjustment process.

(a) To implement a framework adjustment for the Red Crab FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP, including the SBRM. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of

the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) [Reserved]

[67 FR 63233, Oct. 10, 2002, as amended at 80 FR 37198, June 30, 2015]

§ 648.262 Accountability measures for red crab limited access vessels.

(a) *Closure authority*. NMFS shall close the EEZ to fishing for red crab in excess of the incidental limit by commercial vessels for the remainder of the fishing year if the Regional Administrator determines that the TAL has been harvested. Upon notification of the closure, a vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, in excess of 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit.

(b) *Adjustment for an overage*. (1) If NMFS determines that the TAL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

(2) If NMFS determines that the ACL was exceeded in a given fishing year, the exact amount of an overage that was not already deducted from the TAL under paragraph (b)(i) of this section will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

[76 FR 60383, Sept. 29, 2011]

§ 648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits*. (1) [Reserved]

(2) *Conversion to whole crab weight*. (i) For red crab that is landed in half sections, with all gills and other detritus still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

(3) *Female red crab restriction*. A vessel may not fish for, catch, possess, transport, land, sell, trade, or barter, female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing under a red crab DAS.

(4) *Full-processing prohibition*. No person may fully process at sea, possess, or land, fully-processed red crab.

(5) *Mutilation restriction*. A vessel may not retain, possess, or land red crab

claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing on a dedicated red crab trip.

(b) *Vessels issued red crab incidental catch permits*—(1) *Possession and landing restrictions.* A vessel or operator of a vessel that has been issued a red crab incidental catch permit, or a vessel issued a limited access red crab permit not on a dedicated red crab trip, as defined in § 648.2, may catch, possess, transport, land, sell, trade, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition.* No person may fully process at sea, possess, or land, fully-processed red crab.

(3) *Mutilation restrictions.* (i) A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies.

(ii) A vessel may not retain, possess, or land more than two claws and eight legs per crab.

[67 FR 63233, Oct. 10, 2002, as amended at 74 FR 20557, May 4, 2009; 76 FR 60384, Sept. 29, 2011]

§ 648.264 Gear requirements/restrictions.

(a) *Limited access red crab permitted vessels.* (1) Limited access red crab vessel may not harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section.

(2) A vessel owner or operator of a vessel that holds a valid limited access red crab permit may fish with, deploy, possess, haul, harvest red crab from, or carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab. A vessel owner is required to declare, on the annual permit application, the maximum number of traps/pots used per string and the maximum number of strings employed, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots. The vessel is restricted to the product of the maximum number of traps/pots per string multiplied by the maximum number of strings declared on the annual vessel permit application.

(3) *Parlor traps/pots.* No person may haul or remove lobster, red crab or fish from parlor traps/pots when fishing under a red crab DAS.

(4) *Maximum trap/pot size.* The maximum allowable red crab trap/pot size of red crab traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Red crab traps/pots may be rectangular, trapezoidal or conical only, unless other red crab trap/pot designs whose volume does not exceed 18 cubic feet (0.51 cubic meters) are authorized by the Regional Administrator.

(5) *Gear markings.* The following is required on all buoys used at the end of each red crab trawl:

(i) The letters ''RC'' in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel's permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., ''3 of 6'') must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

(6) *Additional gear requirements.* (i) Vessels must comply with the gear regulations found at § 229.32 of this title.

(ii) Red crab traps/pots, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

(b) [Reserved]

[67 FR 63233, Oct. 10, 2002, as amended at 72 FR 57194, Oct. 5, 2007; 76 FR 60384, Sept. 29, 2011]

Subpart N—Management Measures for the Golden Tilefish and Blueline Tilefish Fisheries

SOURCE: 66 FR 49145, Sept. 26, 2001, unless otherwise noted.

§ 648.290 Tilefish Annual Catch Limits (ACL).

(a) *Golden tilefish*. The Tilefish Monitoring Committee shall recommend to the MAFMC an ACL for the commercial golden tilefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) [Reserved]

(2) *Periodicity*. The tilefish commercial ACL may be established on an annual basis for up to three years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Blueline tilefish*. The Tilefish Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational blueline tilefish fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

(1) *Sector allocations*. The ACL for the commercial sector of the blueline tilefish fishery shall be 27 percent of the ABC, and the ACL for the recreational sector of the fishery shall be 73 percent of the ABC.

(2) *Periodicity*. The blueline tilefish commercial and recreational ACLs may be established on an annual basis for up to three years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(c) *Performance review*. The Tilefish Monitoring Committee shall conduct a detailed review of golden tilefish and blueline tilefish fishery performance relative to the appropriate sector ACLs at least every 5 years.

(1) If an ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or in any 2 consecutive years), the Tilefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that either the golden tilefish or blueline tilefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

[82 FR 52857, Nov. 15, 2017]

§ 648.291 Tilefish Annual Catch Targets (ACT).

(a) *Golden tilefish*. The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the individual fishing quota (IFQ) and incidental sectors of the fishery as part of the golden tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *ACT allocation*. (i) The ACT shall be less than or equal to the ACL.

(ii) The Tilefish Monitoring Committee shall include the fishing mortality associated with the recreational fishery in its ACT recommendations only if this source of mortality has not already been accounted for in the ABC recommended by the SSC.

(iii) The Tilefish Monitoring Committee shall allocate 5 percent of the ACT to the incidental sector of the fishery and the remaining 95 percent to the IFQ sector.

(2) *Periodicity*. ACTs may be established on an annual basis for up to three years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Blueline tilefish*. The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the blueline tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. Commercial and recreational specific ACTs shall be less

than or equal to the sector-specific ACLs. The Tilefish Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (b) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to three years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(c) *Performance review*. The Tilefish Monitoring Committee shall conduct a detailed review of golden tilefish and blueline tilefish fishery performance relative to the appropriate ACTs in conjunction with any ACL performance review, as outlined in § 648.290(c)(1) through (3).

[82 FR 52857, Nov. 15, 2017, as amended at 83 FR 10806, Mar. 13, 2018]

§ 648.292 Tilefish specifications.

(a) *Golden Tilefish*. The golden tilefish fishing year is the 12-month period beginning with November 1, annually.

(1) *Annual specification process*. The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, golden tilefish landings and discards information, and any other relevant available data to determine if the golden tilefish ACL, ACT, or total allowable landings (TAL) for the IFQ and/or incidental sectors of the fishery require modification to respond to any changes to the golden tilefish stock's biological reference points or to ensure any applicable rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the IFQ and/or incidental TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend golden tilefish ACL, ACTs, and TALs to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate golden tilefish ACL, ACT, TAL, and other management measures for both the IFQ and the incidental sectors of the fishery for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate golden tilefish ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for both the IFQ and the incidental sectors of the fishery, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the FEDERAL REGISTER specifying the annual golden tilefish ACL, ACT, TAL, and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years for both the IFQ and the incidental sectors of the fishery. After considering public comments, NMFS will publish a final rule in the FEDERAL REGISTER to implement the golden tilefish ACL, ACTs, TALs and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (a)(5) of this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

(2) *Total Allowable Landings (TAL)*. (i) The TALs for both the IFQ and the incidental sectors of the fishery for each fishing year will be specified pursuant to paragraph (a)(1) of this section.

(ii) The sum of the sector-specific TAL and the estimated sector-specific discards shall be less than or equal to the ACT for that sector of the fishery.

(3) *TAL allocation*. For each fishing year, up to 3 percent of the incidental and IFQ TALs may be set aside for the purpose of funding research. The remaining IFQ TAL will be allocated to the individual IFQ permit holders as described in § 648.294(a).

(4) *Adjustments to the quota*. If the incidental harvest exceeds the incidental

TAL for a given fishing year, the incidental trip limit specified at § 648.295(a)(2) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the FEDERAL REGISTER.

(5) *Research quota*. See § 648.22(g).

(b) *Blueline tilefish*. The blueline tilefish fishing year is the calendar year beginning on January 1, annually.

(1) *Recommended measures*. Based on annual review, the Tilefish Monitoring Committee shall recommend to the Tilefish Committee of the MAFMC measures to ensure that the ACLs specified by the process outlined in § 648.290(b), including:

(i) Total Allowable Landings (TAL) for both the commercial and recreational sectors for each fishing year, where the sum of the TAL and sector-specific estimated discards shall be less than or equal to the sector ACT;

(ii) Research quota for both the commercial and recreational sectors set from a range of 0 to three percent of the TAL, as described in paragraph (b)(3) of this section;

(iii) Commercial trip limit;

(iv) Commercial minimum fish size;

(v) Recreational possession limit;

(vi) Recreational minimum fish size;

(vii) Recreational season;

(viii) Retention requirements; and/or

(ix) Any other measure needed to ensure the ACLs are not exceeded.

(2) *Annual specification process*. The Tilefish Committee of the MAFMC shall review the recommendations of the Tilefish Monitoring Committee. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate ACL, ACT, TAL, and other management measures for the blueline tilefish commercial and recreational sectors for a single fishing year or up to three years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate blueline tilefish ACLs, ACTs, TALs, the percentage of TAL allocated to research quota, and any management measures to ensure that the sector ACLs will not be exceeded, for the next fishing year, or up to three fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the FEDERAL REGISTER specifying the annual blueline tilefish ACL, ACT, TAL and any management measures for the blueline tilefish commercial and recreational sectors to ensure that the sector ACLs will not be exceeded for the upcoming fishing year or years. After considering public comments, NMFS will publish a final rule in the FEDERAL REGISTER to implement the blueline tilefish commercial and recreational ACLs, ACTs, TALs and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (b)(3) of this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

(3) *Research quota*. See § 648.22(g).

[82 FR 52858, Nov. 15, 2017, as amended at 83 FR 10806, Mar. 13, 2018]

§ 648.293 Tilefish accountability measures.

(a) *Golden tilefish*—(1) *Commercial incidental fishery closure*. See § 648.295(a)(3).

(2) *Commercial ACL overage evaluation*. If the golden tilefish ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the golden tilefish ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by § 648.294(f).

(b) *Blueline tilefish*—(1) *Commercial fishery closure*. See § 648.295(b)(2).

(2) *Commercial ACL overage evaluation*. The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and discards).

(i) *Commercial landings overage repayment*. Landings in excess of the commercial ACL will be deducted from the commercial ACL for the following year.

(ii) *Non-landing accountability measure*. In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(3) *Recreational ACL overage evaluation*. The recreational sector ACL will be evaluated based on a three-year moving average comparison of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the three-year average recreational sector ACL has been exceeded. The three-year moving average will be phased in over the first three years, beginning with 2017: Total recreational total catch from 2017 will be compared to the 2017 recreational sector ACL; the average total catch from both 2017 and 2018 will be compared to the average of the 2017 and 2018 recreational sector ACLs; the average total catch from 2017, 2018, and 2019 will be compared to the average of the 2017, 2018, and 2019 recreational sector ACLs and, for all subsequent years, the preceding three-year average recreational total catch will be compared to the preceding three-year average recreational sector ACL.

(4) *Recreational accountability measures (AM)*. If the recreational ACL is exceeded, then the following procedure will be followed:

(i) *If biomass is below threshold, the stock is under rebuilding, or biological reference points are unknown*. If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment. Changes to management measures would also be considered through the specifications process to avoid future overages.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding*. If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) *If the recreational ACL has been exceeded*. If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(B) *If the ABC has been exceeded*. If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described below. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(*1*) *Adjustment to recreational ACT*. If an adjustment to the following year's recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient.

(*2*) *Payback coefficient*. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, B_{MSY}–B) divided by one-half of B_{MSY}.

(iii) *If biomass is above target*. If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of

the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

[82 FR 52859, Nov. 15, 2017, as amended at 83 FR 10807, Mar. 13, 2018]

§ 648.294 Golden tilefish individual fishing quota (IFQ) program.

(a) *IFQ allocation permits.* (1) After adjustments for incidental catch, research set-asides, and overages, as appropriate, pursuant to § 648.292(a)(3), the Regional Administrator shall divide the remaining golden tilefish TAL among the IFQ quota shareholders who held IFQ quota share as of September 1 of a given fishing year. Allocations shall be made by applying the IFQ quota share percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(a)(3), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ allocation of 0.5 lb (0.23 kg) or smaller created by this calculation shall be rounded downward to the nearest whole number, and amounts of IFQ allocation greater than 0.5 lb (0.23 kg) shall be rounded upward to the nearest whole number, so that annual IFQ allocations are specified in whole pounds.

(2) Allocations shall be issued in the form of an annual IFQ allocation permit. The IFQ allocation permit shall specify the quota share percentage held by the IFQ allocation permit holder and the total pounds of golden tilefish that the IFQ allocation permit holder is authorized to harvest.

(3) In order to be eligible to hold tilefish IFQ allocation, an individual must be a U.S. citizen or permanent resident alien. Businesses or other entities that wish to hold allocation must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(b) *Application*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ quota shares and IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess golden tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold IFQ quota share as of September 1 of the current fishing year. From September 1 through October 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) *Duration.* An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

(4) *IFQ vessel.* (i) All Federal vessel permit numbers listed on the IFQ allocation permit are authorized to possess golden tilefish pursuant to the IFQ allocation permit.

(ii) An IFQ allocation permit holder who wishes to authorize an additional vessel(s) to possess golden tilefish pursuant to the IFQ allocation permit must send written notification to NMFS. This notification must include:

(A) The vessel name and permit number, and

(B) The dates on which the IFQ allocation permit holder desires the vessel to be authorized to land golden tilefish pursuant to the IFQ allocation permit.

(iii) A vessel listed on the IFQ allocation permit is authorized to possess golden tilefish pursuant to the subject permit, until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder to remove the vessel.

(iv) A single vessel may not be listed on more than one IFQ allocation permit at the same time.

(v) A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ golden tilefish.

(5) *Alteration*. An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(6) *Replacement*. The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(7) *Transfer*. The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the IFQ quota share or the annual IFQ allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(8) *Abandonment or voluntary relinquishment*. Any IFQ allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c)–(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the initial holder of an annual IFQ allocation may transfer the entire annual IFQ allocation, or a portion of the annual IFQ allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section. Annual IFQ allocation transfers shall be effective only for the fishing year in which the transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all annual IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred annual IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, and subject to final approval by the Regional Administrator, a holder of IFQ quota share may permanently transfer the entire IFQ quota share allocation, or a portion of the IFQ quota share allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section.

(3) *IFQ allocation transfer restrictions*. (i) If annual IFQ allocation is temporarily transferred to any eligible person or entity, it may not be transferred again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ allocation or quota share will not be approved by the Regional Administrator if it would result in an entity holding, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total golden tilefish adjusted TAL.

(iii) For the purpose of calculating the appropriate IFQ cost recovery fee, if the holder of an IFQ allocation leases additional IFQ allocation, the quantity and value of golden tilefish landings made after the date the lease is approved by the Regional Administrator are attributed to the transferred quota before being attributed to the allocation holder's base IFQ allocation, if any exists. In the event of multiple leases, landings would be attributed to the leased allocations in the order the

leases were approved by the Regional Administrator. As described in paragraph (h) of this section, a tilefish IFQ quota share allocation holder shall incur a cost recovery fee, based on the value of landings of golden tilefish authorized under the allocation holder's annual tilefish IFQ allocation, including allocation that is leased to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer*. Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Greater Atlantic Regional Fisheries Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by September 1 to be processed and effective before annual IFQ allocations are issued for the next fishing year. Applications for temporary IFQ allocation transfers must be received by October 10 to be processed for the current fishing year.

(i) *Application information requirements*. An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; a declaration of the recipient's eligibility to receive IFQ allocation; the amount of allocation or quota share to be transferred; and a declaration, by IFQ allocation permit number, of all the IFQ allocations in which the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land the IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer application*. Unless an application to transfer IFQ quota share and/or annual IFQ allocation is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of IFQ transfer application*. The Regional Administrator may reject an application to transfer IFQ quota share or annual IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in the transferee having a tilefish IFQ allocation or holding IFQ quota share that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section; the transferor or transferee is delinquent in payment of an IFQ cost recovery fee as described in paragraph (h)(4) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages*. If an IFQ allocation is exceeded, including by amounts of golden tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, the amount of the overage will be deducted from the IFQ shareholder's allocation in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already

been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction*. No person or entity may acquire more than 49 percent of the annual adjusted golden tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery*. As required under section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the Regional Administrator shall collect a fee to recover the actual costs directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program.

(1) *Payment responsibility*. Each tilefish IFQ allocation permit holder with quota share shall incur a cost recovery fee annually, based on the value of landings of golden tilefish authorized under his/her tilefish IFQ allocation, including allocation that he/she leases to another IFQ allocation permit holder. The tilefish IFQ allocation permit holder is responsible for paying the fee assessed by NMFS.

(2) *IFQ fee determination*. The tilefish IFQ cost recovery billing period runs annually from January 1 through December 31.

(i) *Determination of total recoverable costs*. The Regional Administrator shall determine the actual costs directly associated with the management, data collection and analysis, and enforcement of the tilefish IFQ program incurred by NMFS during the cost recovery billing period.

(ii) *Calculating fee percentage*. The recoverable costs determined by the Regional Administrator will be divided by the total ex-vessel value of all golden tilefish IFQ landings during the cost recovery billing period to derive a fee percentage. Each IFQ allocation permit holder with quota share will be assessed a fee based on the fee percentage multiplied by the total ex-vessel value of all landings under his/her IFQ allocation permit, including landings of allocation that was leased to another IFQ allocation permit holder.

(A) The ex-vessel value for each pound of golden tilefish landed by an IFQ allocation permit holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(B) The cost recovery fee percentage shall not exceed three percent of the total value of golden tilefish landings, as required under section 304(d)(2)(B) of the Magnuson-Stevens Act.

(3) *Fee payment procedure*. NMFS will create an annual IFQ allocation bill for each cost recovery billing period and provide it to IFQ allocation permit holders with quota share. The bill will include information regarding the amount and value of IFQ allocation landed during the prior cost recovery billing period, and the associated cost recovery fees.

(i) *Payment due date*. An IFQ allocation permit holder who has incurred a cost recovery fee must pay the fee to NMFS within 45 days of the date of the bill.

(ii) *Payment submission method*. Cost recovery payments shall be made electronically via the Federal Web portal, *www.pay.gov*, or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not practicable.

(4) *Payment compliance*. If an IFQ allocation permit holder does not submit full payment by the due date described in paragraph (h)(3)(i) of this section, the Regional Administrator may:

(i) At any time thereafter, notify the IFQ allocation permit holder in writing that his/her IFQ allocation permit is suspended, thereby prohibiting landings of tilefish above the incidental limit, as specified at § 648.295(a).

(ii) Disapprove any transfer of annual tilefish allocation or quota share to or from the IFQ allocation permit holder as described in paragraph (e)(4)(iii) of this section, until such time as the amount due is paid.

(iii) Deny renewal of the IFQ allocation permit if it had not yet been issued for the current year, or deny renewal of the IFQ allocation permit for the following year.

(iv) If the fee amount is not appealed, the Regional Administrator may issue a Final Administrative Determination (FAD) as described in paragraph (h)(5) of this section, based upon available information.

(5) *Appeal of IFQ fee amount.* If a tilefish IFQ allocation permit holder disagrees with the fee amount determined by NMFS, he/she may appeal the cost recovery bill.

(i) IFQ fee appeals must be submitted to NMFS in writing before the due date described in paragraph (h)(3)(i) of this section.

(ii) The IFQ allocation permit holder shall have the burden of demonstrating that the fee amount calculated by NMFS is incorrect and what the correct amount is.

(iii) If a request to appeal is submitted on time, the Regional Administrator shall notify the IFQ allocation permit holder in writing, acknowledging the appeal and providing 30 days to submit any additional relevant documentation supporting an alternative fee amount.

(iv) While the IFQ fee is under appeal and the tilefish IFQ allocation permit is suspended, as described in paragraph (h)(4) of this section, the IFQ allocation permit holder may request a Letter of Authorization to fish until the appeal is concluded. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued.

(v) *Final Administrative Determination (FAD).* Based on a review of available information, including any documentation submitted by the IFQ allocation permit holder in support of the appropriateness of a different fee amount, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that an alternate fee amount is correct. This determination shall be set forth in a FAD that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce.

(A) The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD.

(B) If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall:

(*1*) Refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection; and

(*2*) Cancel any Letter of Authorization to fish that had been issued during the appeal.

(vi) If NMFS does not receive full payment of an IFQ cost recovery fee prior to the end of the cost recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit and any associated IFQ quota share shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(8) of this section.

(6) *Annual cost recovery report.* NMFS will publish annually a report on the status of the tilefish IFQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, enforcement, and data collection and analysis associated with the tilefish IFQ program during the prior cost recovery billing period, and other relevant information at the discretion of the Regional Administrator.

(i) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.*, future amendments or frameworks),

but no less frequently than every 7 years.

[78 FR 49187, Aug. 13, 2013, as amended at 82 FR 52859, Nov. 15, 2017; 83 FR 10807, Mar. 13, 2018]

§ 648.295 Tilefish commercial trip limits and landing condition.

(a) *Golden tilefish*—(1) *IFQ landings.* Any golden tilefish landed by a vessel fishing under an IFQ allocation permit as specified at § 648.294(a), on a given fishing trip, count as landings under the IFQ allocation permit.

(2) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish vessel permit, as described at § 648.4(a)(12), unless the vessel is fishing under a tilefish IFQ allocation permit, is prohibited from possessing more than:

(i) 500 lb (226.8 kg) of golden tilefish at any time, or

(ii) 50 percent, by weight, of the total of all species being landed; whichever is less.

(3) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the golden tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental golden tilefish TAL has been landed. The Regional Administrator shall publish a notice in the FEDERAL REGISTER notifying vessel and dealer permit holders that, effective upon a specific date, the incidental golden tilefish fishery is closed for the remainder of the fishing year.

(b) *Blueline tilefish*—(1) *Commercial possession limit.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (227 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

(2) *In-season adjustment of possession limit.* The Regional Administrator will monitor the harvest of the blueline tilefish commercial TAL based on dealer reports and other available information.

(i) When 70 percent of the blueline tilefish commercial TAL will be landed, the Regional Administrator may publish a notice in the FEDERAL REGISTER notifying vessel and dealer permit holders that, effective upon a specific date, the blueline tilefish commercial possession limit is reduced to 300 lb (136 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

(ii) When 100 percent of the blueline tilefish commercial TAL will be landed, the Regional Administrator will publish a notice in the FEDERAL REGISTER notifying vessel and dealer permit holders that, effective upon a specific date, the blueline tilefish commercial fishery is closed for the remainder of the fishing year. No vessel may retain or land blueline tilefish in or from the Tilefish Management Unit after the announced closure date.

(c) *Landing condition.* Commercial golden or blueline tilefish must be landed with head and fins naturally attached, but may be gutted.

[82 FR 52860, Nov. 15, 2017, as amended at 83 FR 10807, Mar. 13, 2018; 84 FR 3342, Feb. 12, 2019]

§ 648.296 Tilefish recreational possession limits and gear restrictions.

(a) *Golden tilefish.* (1) Any person fishing from a vessel that is not fishing under a tilefish commercial vessel permit issued pursuant to § 648.4(a)(12), may land up to eight golden tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

(2) Any vessel engaged in recreational fishing may not retain golden tilefish, unless exclusively using rod and reel fishing gear, with a maximum limit of five hooks per rod. Anglers may use either a manual or an electric reel.

(b) *Blueline tilefish.* The recreational blueline tilefish fishery is open May 1 through October 31, and closed November 1 through April 30.

(1) *Private recreational vessels.* Any person fishing from a vessel that is not fishing under a tilefish commercial or charter/party vessel permit issued pursuant to § 648.4(a)(12), may land up to three blueline tilefish per trip.

(2) *Uninspected for-hire vessels.* Anglers fishing onboard a for-hire vessel under a tilefish charter/party vessel permit issued pursuant to § 648.4(a)(12), which has not been issued a valid U.S.

Coast Guard Certificate of Inspection may land up to five blueline tilefish per person per trip.

(3) *Inspected for-hire vessels*. Anglers fishing onboard a for-hire vessel under a tilefish charter/party vessel permit issued pursuant to § 648.4(a)(12), which has been issued a valid U.S. Coast Guard Certificate of Inspection may land up to seven blueline tilefish per person per trip.

(c) *Enforcement*. Tilefish harvested by vessels subject to the possession limits with more than one person on board may be pooled in one or more containers. Compliance with the golden tilefish possession limit will be determined by dividing the number of golden tilefish on board by the number of persons on board. Compliance with the blueline tilefish possession limit will be determined by dividing the number of blueline tilefish on board by the number of persons on board. The captain and crew of a party or charter boat are not counted in determining the possession limit. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

[82 FR 52861, Nov. 15, 2017, as amended at 83 FR 10807, Mar. 13, 2018; 84 FR 3342, Feb. 12, 2019]

§ 648.297 Tilefish gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. lat.			W. long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

[76 FR 60647, Sept. 29, 2011]

§ 648.299 Tilefish framework specifications.

(a) *Within-season management action*. The MAFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP.

(1) *Specific management measures*. The following specific management measures may be adjusted at any time through the framework adjustment process:

(i) Minimum fish size;

(ii) Minimum hook size;

(iii) Closed seasons;

(iv) Closed areas;

(v) Gear restrictions or prohibitions;

(vi) Permitting restrictions;

(vii) Gear limits;

(viii) Trip limits;

(ix) Adjustments within existing ABC control rule levels;

(x) Adjustments to the existing MAFMC risk policy;

(xi) Introduction of new AMs, including sub ACTs;

(xii) Annual specification quota setting process;

(xiii) Tilefish FMP Monitoring Committee composition and process;

(xiv) Description and identification of EFH;

(xv) Fishing gear management measures that impact EFH;

(xvi) Habitat areas of particular concern;

(xvii) Set-aside quotas for scientific research;

(xviii) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

(xix) Recreational management measures, including the bag limit, minimum fish size limit, seasons, and gear restrictions or prohibitions;

(xx) Golden tilefish IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues;

(xxi) Blueline tilefish recreational permitting and reporting requirements previously considered by the MAFMC; and

(xxii) Blueline tilefish allocations to the commercial and recreational sectors of the fishery within the range of allocation alternatives considered by the MAFMC in Amendment 6.

(xxiii) Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require a formal amendment of the FMP instead of a framework adjustment.

(2) *Adjustment process*. If the MAFMC determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second MAFMC meeting on that framework action.

(3) *MAFMC recommendation*. After developing management actions and receiving public testimony, the MAFMC will make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action*. If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraphs (a)(2) and (a)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If the Regional Administrator concurs with the MAFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur with the MAFMC's recommendation, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[76 FR 60648, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011; 80 FR 37199, June 30, 2015; 82 FR 52861, Nov. 15, 2017]

Subpart O—Management Measures for the NE Skate Complex Fisheries

SOURCE: 68 FR 49701, Aug. 19, 2003, unless otherwise noted.

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review and specifications process*. The Council, its Skate Plan Development Team (PDT), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources.

(1) The Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices, fishery landings and discards; a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions; and a determination of whether any of the accountability measures specified under § 648.323 were triggered. The review shall also include an analysis of changes to other FMPs (e.g., Northeast Multispecies, Monkfish, Atlantic Scallops, etc.) that may impact skate stocks, and describe the anticipated impacts of those changes on the skate fishery.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the Skate PDT shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council shall monitor the trawl survey index as a proxy for stock biomass. As long as the 3-year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3-year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council shall take management action to ensure that stock rebuilding will achieve target levels.

(4) Based on the annual review described above and/or the Stock Assessment and Fishery Evaluation (SAFE) Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee, and any other relevant information, the Skate PDT shall recommend to the Skate Committee and Council the following annual specifications for harvest of skates: An annual catch limit (ACL) for the skate complex set less than or equal to ABC; an annual catch target (ACT) for the skate complex set less than or equal to 90 percent of the ACL; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each fishing year (May 1–April 30), specified for a period of up to 2 fishing years.

(5) *Recommended measures*. The Skate PDT shall also recommend management measures to the Skate Committee and Council to assure that the

specifications are not exceeded. Recommended measures should include, but are not limited to:

(i) Possession limits in each fishery;

(ii) In-season possession limit triggers for the wing and/or bait fisheries;

(iii) Required adjustments to in-season possession limit trigger percentages or the ACL–ACT buffer, based on the accountability measures specified at § 648.323; and

(iv) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(6) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the Scientific and Statistical Committee, and any other relevant information, the Skate PDT may also recommend to the Skate Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of the skate complex and its component species. These adjustments may be included in the Council's specifications for the skate fisheries.

(7) *Council recommendation*. The Council shall review the recommendations of the Skate PDT, Skate Committee, and Scientific and Statistical Committee, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act. The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws. If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *Biennial SAFE Report*—(1) The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Skate PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

[75 FR 34058, June 16, 2010, as amended at 80 FR 37199, June 30, 2015; 84 FR 4375, Feb. 15, 2019]

§ 648.321 Framework adjustment process.

(a) *Adjustment process*. To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before

the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council shall develop and analyze appropriate management actions within the scope of measures specified in paragraph (b) of this section. The Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the framework measures should be issued directly as a final rule, without opportunity for public notice and comment, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) The Regional Administrator may publish the recommended framework measures in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting;

(2) Skate overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession limits;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;

(9) Establishment of a mechanism for TAC set-asides to conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) OY and/or MSY specifications;

(19) Changes to the accountability measures described at § 648.323;

(20) Changes to TAL allocation proportions to the skate wing and bait fisheries;

(21) Changes to seasonal quotas in the skate bait or wing fisheries;

(22) Reduction of the baseline 25-percent ACL–ACT buffer to less than 25 percent;

(23) Changes to catch monitoring procedures; and

(24) Changes, as appropriate, to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[75 FR 34059, June 16, 2010, as amended at 80 FR 37199, June 30, 2015]

§ 648.322 Skate allocation, possession, and landing provisions.

(a) *Allocation of TAL*. (1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market, or classified by Federal dealers as food as required under § 648.7(a)(1)(i), shall count against the skate wing fishery TAL. The annual skate wing fishery TAL shall be allocated in two seasonal quota periods as follows:

(i) Season 1—May 1 through August 31, 57 percent of the annual skate wing fishery TAL shall be allocated;

(ii) Season 2—September 1 through April 30, the remainder of the annual skate wing fishery TAL not landed in Season 1 shall be allocated.

(2) A total of 33.5 percent of the annual TAL shall be allocated to the skate bait fishery. All skate products that are landed for the skate bait market, or classified by Federal dealers as bait as required under § 648.7(a)(1)(i), shall count against the skate bait fishery TAL. The annual skate bait fishery TAL shall be allocated in three seasonal quota periods as follows:

(i) Season 1–May 1 through July 31, 30.8 percent of the annual skate bait fishery TAL shall be allocated;

(ii) Season 2–August 1 through October 31, 37.1 percent of the annual skate bait fishery TAL shall be allocated; and

(iii) Season 3–November 1 through April 30, the remainder of the annual skate bait fishery TAL not landed in Seasons 1 or 2 shall be allocated.

(b) *Skate wing possession and landing limits*—(1) *Vessels fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS*. (i) A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows: Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip in Season 1 (May 1 through August 31), and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip in Season 2 (September 1 through April 30), or any prorated combination of the

allowable landing forms defined at paragraph (b)(5) of this section.

(ii) When fishing under the possession limits specified in paragraph (b)(1)(i) of this section, a vessel is allowed to possess and land up to 650 lb (295 kg) of barndoor skate wings (1,476 lb (670 kg) whole weight) per trip in Season 1, and 1,025 lb (465 kg) of barndoor skate wings (2,327 lb (1,056 kg) whole weight) per trip in Season 2. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.,* total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 2,600 lb in Season 1 and 4,100 lb in Season 2). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *NE multispecies Category B DAS.* A vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip, or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(3) *In-season adjustment of skate wing possession limits.* The Regional Administrator has the authority, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, to reduce the skate wing possession limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section) for the remainder of the applicable quota season. When the incidental possession limit is implemented, a vessel is allowed to possess and land up to 125 lb (57 kg) of barndoor skate wings (284 lb (129 kg) whole weight) per trip. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.,* total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 500 lb). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The in-season adjustment of skate wing possession limits will be implemented under the following circumstances:

(i) When 85 percent of the Season 1 skate wing quota is projected to be landed between May 1 and August 17, the Regional Administrator shall reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(ii) When 85 percent of the Season 1 skate wing quota is projected to be landed between August 18 and August 31, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(iii) When 85 percent of the annual skate wing fishery TAL is projected to be landed in Season 2, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section, unless such a reduction would be expected to prevent attainment of the annual TAL.

(4) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at § 648.53, § 648.82, or § 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(5) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified

at paragraph (c) of this section, a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

(c) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions for a minimum of 7 consecutive days, provided that when the vessel is fishing pursuant to the terms of authorization at least the following requirements and conditions are met:

(1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(3) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of whole skates per trip during Seasons 1 or 2 and no more than 12,000 lb (5,443 kg) of whole skates per trip during Season 3.

(4) The vessel owner or operator possesses or lands only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) of this section may fish for, possess, or land skates for uses other than bait.

(6) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits.* When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 80 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, reduce the skate bait trip limit to 8,000 lb (3,629 kg) of whole skates for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *In-season closure of skate bait fishery.* When the Regional Administrator projects that 100 percent of the skate bait fishery TAL will be landed, the Regional Administrator shall, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, close the skate bait fishery, unless such a closure would be expected to prevent attainment of the annual TAL. During a skate bait fishery closure all skate bait LOAs as described in paragraph (c) of this section are void. All skates harvested and landed during a skate bait fishery closure will be attributed towards the skate-wing TAL as described in this section.

(f) *Removal of in-season possession limit reductions.* If it is determined that an in-season trip limit reduction as described in paragraphs (d) and (e) of this section could prohibit the skate bait fishery from achieving its annual TAL, the in-season possession limit reduction may be removed.

(g) *Prohibitions on possession of skates.* A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in paragraph (c) of this section; when fishing under a NE multispecies Category B DAS as described under paragraph (b) of this section; when fishing under the incidental skate possession limit for vessels not under a DAS as described in paragraph (b)(4) of this section; or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(3) Discard any skate wings when in possession of barndoor skate wings.

(4) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[75 FR 34060, June 16, 2010, as amended at 76 FR 28331, May 17, 2011; 77 FR 25100, Apr. 27, 2012; 81 FR 54747, Aug. 17, 2016; 83 FR 6135, Feb. 13, 2018; 83 FR 48988, Sept. 28, 2018]

§ 648.323 Accountability measures.

(a) *TAL overages.* If the skate wing fishery TAL or skate bait fishery TAL is determined to have been exceeded by more than 5 percent in any given year based upon, but not limited to, available landings information, the Regional Administrator shall reduce the in-season possession limit trigger for that fishery, as specified at § 648.322(b) and (d), in the next fishing year by 1 percent for each 1 percent of TAL overage, consistent with the Administrative Procedure Act.

(b) *ACL overages.* (1) If the ACL is determined to have been exceeded in any given year, based upon, but not limited to, available landings and discard information, the percent buffer between ACL and ACT shall be increased by 1 percent for each 1-percent ACL overage in the second fishing year following the fishing year in which the ACL overage occurred, through either the specifications or framework adjustment process described under §§ 648.320 and 648.321.

(2) If the Council fails to initiate action to correct an ACL overage through the specifications or framework adjustment process, consistent with paragraph (b)(1) of this section, the Regional Administrator shall implement the required adjustment, as described under paragraph (b)(1) of this section, consistent with the Administrative Procedure Act.

[75 FR 34061, June 16, 2010, as amended at 84 FR 4376, Feb. 15, 2019]

Subpart P—Mid-Atlantic Forage Species and Atlantic Chub Mackerel

SOURCE: 82 FR 40733, Aug. 28, 2017, unless otherwise noted.

§ 648.350 Mid-Atlantic forage species and Atlantic chub mackerel annual landing limits.

(a) *Mid-Atlantic forage species.* There is no annual landing limit for Mid-Atlantic forage species, as defined at § 648.2.

(b) *Atlantic chub mackerel.* Effective through December 31, 2020, the annual landings limit for Atlantic chub mackerel is set at 2.86 million lb (1,297 mt). All landings of Atlantic chub mackerel by vessels issued a Federal commercial permit in accordance with § 648.4 in ports from Maine through North Carolina shall count against the annual landings limit. NMFS shall close the directed fishery for Atlantic chub mackerel in the EEZ portion of the Mid-Atlantic Forage Species Management Unit in a manner consistent with the Administrative Procedure Act when the Regional Administrator determines that 100 percent of the Atlantic chub mackerel annual landings limit has been harvested. Following closure of the directed Atlantic chub mackerel fishery, a vessel must adhere to the possession limit specified in § 648.351(b).

§ 648.351 Mid-Atlantic forage species and Atlantic chub mackerel possession limits.

(a) *Mid-Atlantic forage species.* Unless otherwise prohibited in § 648.80, a vessel

issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land up to 1,700 lb (771.11 kg) of all Mid-Atlantic forage species combined per trip in or from the EEZ portion of the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (c) of this section. A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

(b) *Atlantic chub mackerel.* Effective through December 31, 2020, a vessel issued a valid commercial permit in accordance with § 648.4 may fish for, possess, and land an unlimited amount of Atlantic chub mackerel from the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (c) of this section, provided the Atlantic chub mackerel annual landing limit has not been harvested. Once the Atlantic chub mackerel annual landing limit has been harvested, as specified in § 648.350, a vessel may fish for, possess, and land up to 40,000 lb (18.14 mt) of Atlantic chub mackerel per trip in or from the Mid-Atlantic Forage Species Management Unit for the remainder of the fishing year (until December 31). A vessel not issued a permit in accordance with § 648.4 that is fishing exclusively in state waters is exempt from the possession limits specified in this section.

(c) *Mid-Atlantic Forage Species Management Unit.* The Mid-Atlantic Forage Species Management Unit is the area of the Atlantic Ocean that is bounded on the southeast by the outer limit of the U.S. EEZ; bounded on the south by 35°15.3′ N. lat. (the approximate latitude of Cape Hatteras, NC); bounded on the west and north by the coastline of the United States; and bounded on the northeast by the following points, connected in the order listed by straight lines:

Point	Latitude	Longitude
1	40°59.32′ N.	73°39.62′ W.
2	40°59.02′ N.	73°39.41′ W.
3	40°57.05′ N.	73°36.78′ W.
4	40°57.87′ N.	73°32.85′ W.
5	40°59.78′ N.	73°23.70′ W.
6	41°1.57′ N.	73°15.00′ W.
7	41°3.40′ N.	73°6.10′ W.
8	41°4.65′ N.	73°0.00′ W.
9	41°6.67′ N.	72°50.00′ W.
10	41°8.69′ N.	72°40.00′ W.
11	41°10.79′ N.	72°29.45′ W.
12	41°12.22′ N.	72°22.25′ W.
13	41°13.57′ N.	72°15.38′ W.
14	41°14.94′ N.	72°8.35′ W.
15	41°15.52′ N.	72°5.41′ W.
16	41°17.43′ N.	72°1.18′ W.
17	41°18.62′ N.	71°55.80′ W.
18	41°18.27′ N.	71°54.47′ W.
19	41°10.31′ N.	71°46.44′ W.
20	41°2.35′ N.	71°38.43′ W.
21	40°54.37′ N.	71°30.45′ W.
22	40°46.39′ N.	71°22.51′ W.
23	40°38.39′ N.	71°14.60′ W.
24	40°30.39′ N.	71°6.72′ W.
25	40°22.38′ N.	70°58.87′ W.
26	40°14.36′ N.	70°51.05′ W.
27	40°6.33′ N.	70°43.27′ W.
28	39°58.29′ N.	70°35.51′ W.
29	39°50.24′ N.	70°27.78′ W.
30	39°42.18′ N.	70°20.09′ W.
31	39°34.11′ N.	70°12.42′ W.
32	39°26.04′ N.	70°4.78′ W.
33	39°17.96′ N.	69°57.18′ W.
34	39°9.86′ N.	69°49.6′ W.
35	39°1.77′ N.	69°42.05′ W.
36	38°53.66′ N.	69°34.53′ W.
37	38°45.54′ N.	69°27.03′ W.
38	38°37.42′ N.	69°19.57′ W.
39	38°29.29′ N.	69°12.13′ W.
40	38°21.15′ N.	69°4.73′ W.
41	38°13.00′ N.	68°57.35′ W.
42	38°4.84′ N.	68°49.99′ W.
43*	38°2.21′ N.	68°47.62′ W.

* Point 43 falls on the U.S. EEZ.

(d) *Transiting.* Any vessel issued a valid permit in accordance with § 648.4 may transit the Mid-Atlantic Forage Species Management Unit, as defined in paragraph (c) of this section, with an amount of Mid-Atlantic forage species or Atlantic chub mackerel on board that exceeds the possession limits specified in paragraphs (a) and (b) of this section, respectively, to land in a port in a state that is outside of the Mid-Atlantic Forage Species Management Unit, provided that those species were harvested outside of the Mid-Atlantic Forage Species Management Unit and that all gear is stowed and not available for immediate use as defined in § 648.2. The transitting provisions specified in this paragraph (d) for a vessel possessing Atlantic chub mackerel are effective through December 31, 2020.

§ 648.352 Mid-Atlantic forage species and Atlantic chub mackerel framework measures.

(a) *General.* The MAFMC may, at any time, initiate action to add or revise management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Mackerel, Squid, and Butterfish FMP; the Atlantic Surfclam

and Ocean Quahog FMP; the Summer Flounder, Scup, and Black Sea Bass FMP; the Atlantic Bluefish FMP; the Spiny Dogfish FMP; and Tilefish FMPs.

(b) *Adjustment process*. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at its first meeting, prior to its second meeting, and at its second meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The list of Mid-Atlantic forage species, possession limits, annual landing limits, and any other measure currently included in the applicable FMPs specified in paragraph (a) of this section. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMPs instead of a framework adjustment.

(c) *MAFMC recommendation*. See § 648.110(a)(2).

(d) *NMFS action*. See § 648.110(a)(3).

(e) *Emergency actions*. See § 648.110(a)(4).

Subpart Q—Habitat-Related Management Measures

SOURCE: 83 FR 15275, Apr. 9, 2018, unless otherwise noted.

§ 648.370 Habitat Management Areas.

Unless otherwise specified, no fishing vessel or person on a fishing vessel may fish with bottom-tending mobile gear in the areas defined in this section. Copies of charts depicting these areas are available from the Regional Administrator upon request.

(a) *Eastern Maine Habitat Management Area*. The Eastern Maine HMA is bounded on the northwest by the outer limit of Maine state waters, and bounded on all other sides by straight lines connecting the following points in the order stated:

EASTERN MAINE HMA

Point	N latitude	W longitude
EMH1 [1]	44°07.65′ N	68°10.64′ W
EMH2	44°02.50′ N	68°06.10′ W
EMH3	43°51.00′ N	68°33.90′ W
EMH4 [1]	43°56.62′ N	68°38.12′ W

[1] Points 1 and 4 are intended to fall along the outer limit of Maine state waters.

(b) *Jeffreys Bank Habitat Management Area*. The Jeffreys Bank HMA is defined by straight lines connecting the following points in the order stated:

JEFFREYS BANK HMA

Point	N latitude	W longitude
JBH1	43°31′ N	68°37′ W
JBH2	43°20′ N	68°37′ W
JBH3	43°20′ N	68°55′ W
JBH4	43°31′ N	68°55′ W
JBH1	43°31′ N	68°37′ W

(c) *Cashes Ledge Habitat Management Area*. The Cashes Ledge HMA is defined by straight lines connecting the following points in the order stated:

CASHES LEDGE HMA

Point	N latitude	W longitude
CLH1	43°01.0′ N	69°00.0′ W
CLH2	43°01.0′ N	68°52.0′ W
CLH3	42°45.0′ N	68°52.0′ W
CLH4	42°45.0′ N	69°00.0′ W
CLH1	43°01.0′ N	69°00.0′ W

(d) *Fippennies Ledge Habitat Management Area*. The Fippennies Ledge HMA is defined by straight lines connecting the following points in the order stated:

FIPPENNIES LEDGE HMA

Point	N latitude	W longitude
FLH1	42°50.0′ N	69°17.0′ W
FLH2	42°44.0′ N	69°14.0′ W
FLH3	42°44.0′ N	69°18.0′ W
FLH4	42°50.0′ N	69°21.0′ W
FLH1	42°50.0′ N	69°17.0′ W

(e) *Ammen Rock Habitat Management Area*. (1) The Ammen Rock HMA is defined by straight lines connecting the following points in the order stated:

AMMEN ROCK HMA

Point	N latitude	W longitude
ARH1	42°55.5′ N	68°57.0′ W
ARH2	42°52.5′ N	68°55.0′ W
ARH3	42°52.5′ N	68°57.0′ W
ARH4	42°55.5′ N	68°59.0′ W

AMMEN ROCK HMA—Continued

Point	N latitude	W longitude
ARH1	42°55.5′ N	68°57.0′ W

(2) No fishing vessel, including private and for-hire recreational fishing vessels, may fish in the Ammen Rock HMA, except for vessels fishing exclusively with lobster traps, as defined in § 697.2.

(f) *Western Gulf of Maine Habitat Management Area.* (1) *Coordinates.* The Western GOM HMA is defined by the straight lines connecting the following points in the order stated:

WESTERN GULF OF MAINE HMA

Point	N latitude	W longitude
WGMH1	43°15′ N	70°15′ W
WGMH2	42°15′ N	70°15′ W
WGMH3	42°15′ N	70°00′ W
WGMH4	43°15′ N	70°15′ W
WGMH1	43°15′ N	70°15′ W

(2) *Western Gulf of Maine Shrimp Exemption Area.* Vessels fishing with shrimp trawls under the Small Mesh Northern Shrimp Fishery Exemption specified at § 648.80(a)(5) may fish within the Western Gulf of Maine HMA Shrimp Exemption Area which is defined by the straight lines connecting the following points in the order stated:

WESTERN GULF OF MAINE SHRIMP EXEMPTION AREA

Point	N latitude	W longitude
SEA1	43°15′ N	70° W
SEA2	43°13′ N	70° W
SEA3	43°13′ N	70°05′ W
SEA4	43°09′ N	70°05′ W
SEA5	43°09′ N	70°08′ W
SEA6	42°55′ N	70°08′ W
SEA7	42°55′ N	70°15′ W
SEA8	43°15′ N	70°15′ W
SEA1	43°15′ N	70° W

(g) *Closed Area II Habitat Closure Area.* The Closed Area II Habitat Closure Area is defined by the straight lines, except where otherwise noted, connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N latitude	W longitude	Notes
CIIH1	42°10′ N	67°20′ W	
CIIH2	42°10′ N	67°9.38′ W	([1] [2])
CIIH3	42°00′ N	67°0.63′ W	([2] [3])
CIIH4	42°00′ N	67°10′ W	
CIIH5	41°50′ N	67°10′ W	
CIIH6	41°50′ N	67°20′ W	
CIIH1	42°10′ N	67°20′ W	

[1] Point CIIH2 represents the intersection of 42°10′ N lat. and the U.S.-Canada Maritime Boundary.
[2] From Point CIIH2 to Point CIIH3 along the U.S.-Canada Maritime Boundary.
[3] Point CIIH3 represents the intersection of 42°00′ N lat. and the U.S.-Canada maritime Boundary.

(h) *Great South Channel Habitat Management Area.* (1) *Coordinates.* The Great South Channel HMA is defined by the straight lines connecting the following points in the order stated:

GREAT SOUTH CHANNEL HMA

Point	N latitude	W longitude
GSCH1	41°30.3′ N	69°31.0′ W
GSCH2	41°0.00′ N	69°18.5′ W
GSCH3	40°51.7′ N	69°18.5′ W
GSCH4	40°51.6′ N	69°48.9′ W
GSCH5	41°30.2′ N	69°49.3′ W
GSCH1	41°30.3′ N	69°31.0′ W

(2) *Hydraulic Clam Dredge Exemption.* (i) Except for the portion of the Great South Channel HMA defined in paragraph (h)(2)(iii) of this section, surfclam and ocean quahog permitted vessels may fish with hydraulic clam dredges in the Great South Channel HMA.

(ii) The Hydraulic clam dredge exemption is effective until April 9, 2019, after which, no vessels fishing with hydraulic clam dredges may fish within the Great South Channel HMA.

(iii) The hydraulic clam dredge exemption does not apply in the area defined as the straight lines connecting the following points in the order stated:

Point	N latitude	W longitude
GSC1	41°30.3′ N	69°31.0′ W

Point	N latitude	W longitude
MBTG2	41°21.0′ N	69°27.2′ W
MBTG3	41°21.0′ N	69°43.0′ W
MBTG4	41°30.0′ N	69°43.0′ W
GSC1	41°30.3′ N	69°31.0′ W

(i) *Transiting*. Unless otherwise restricted, a vessel may transit the habitat management areas described in this section provided that its gear is stowed and not available for immediate use as defined in § 648.2.

(j) *Other habitat protection measures*. The Inshore Gulf of Maine/Georges Bank Restricted Roller Gear Area described in § 648.80(a)(3)(vii) is considered a habitat protection measure and the restrictions outlined in that section apply to all bottom trawl gear.

(k) *Review of habitat management measures*. The New England Fishery Management Council will develop a strategic process to evaluate the boundaries, scope, characteristics, and timing of habitat and spawning protection areas to facilitate review of these areas at 10-year intervals.

§ 648.371 Dedicated Habitat Research Areas.

(a) *Dedicated Habitat Research Area (DHRA) topics*. The areas defined in this section are intended to facilitate coordinated research on gear impacts, habitat recovery, natural disturbance, and productivity.

(b) *Stellwagen Dedicated Habitat Research Area*. (1) The Stellwagen DHRA is defined by the straight lines connecting the following points in the order stated:

STELLWAGEN DHRA

Point	N latitude	W longitude
SDHRA1	42°15.0′ N	70°00.0′ W
SDHRA2	42°15.0′ N	70°15.0′ W
SDHRA3	42°45.2′ N	70°15.0′ W
SDHRA4	42°46.0′ N	70°13.0′ W
SDHRA5	42°46.0′ N	70°00.0′ W
SDHRA1	42°15.0′ N	70°00.0′ W

(2) Vessels fishing with bottom-tending mobile gear, sink gillnet gear, or demersal longline gear are prohibited from fishing in the Stellwagen DHRA, unless otherwise exempted.

(c) *Georges Bank Dedicated Habitat Research Area*. (1) The Georges Bank DHRA is defined by straight lines connecting the following points in the order stated:

GEORGES BANK DHRA

Point	Latitude	Longitude
GBDHRA1	40°54.95′ N	68°53.37′ W
GBDHRA2	40°58′ N	68°30′ W
GBDHRA3	40°45′ N	68°30′ W
GBDHRA4	40°45′ N	68°45′ W

(2) Vessels fishing with bottom-tending mobile gear are prohibited from fishing in the Georges Bank DHRA, unless otherwise exempted.

(d) *Transiting*. Unless otherwise restricted or specified in this paragraph (d), a vessel may transit the Dedicated Habitat Research Areas of this section provided that its gear is stowed and not available for immediate use as defined in § 648.2.

(e) *Dedicated Habitat Research Areas review*. (1) The Regional Administrator shall initiate a review of the DHRAs defined in this section three years after implementation.

(2) After initiation of the review and consultation with the New England Fishery Management Council, the Regional Administrator may remove a DHRA. The following criteria will be used to determine if DHRA should be maintained:

(i) Documentation of active and ongoing research in the DHRA area, in the form of data records, cruise reports or inventory samples with analytical objectives focused on the DHRA topics, described in paragraph (a) of this section; and

(ii) Documentation of pending or approved proposals or funding requests (including ship time requests), with objectives specific to the DHRA topics, described in paragraph (a) of this section.

(3) The Regional Administrator will make any such determination in accordance with the APA through notification in the FEDERAL REGISTER.

§ 648.372 Frank R. Lautenberg Deep-Sea Coral Protection Area.

(a) *Restrictions*. No vessel may fish with bottom-tending gear within the Frank R. Lautenberg Deep-Sea Coral Protection Area described in this section, unless transiting pursuant to paragraph (d) of this section, fishing

lobster trap gear in accordance with § 697.21 of this chapter, or fishing red crab trap gear in accordance with § 648.264. Bottom-tending gear includes but is not limited to bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots and traps, and sink or anchored gillnets. The Frank R. Lautenberg Deep-Sea Coral Protection Area consists of the Broad and Discrete Deep-Sea Coral Zones defined in paragraphs (b) and (c) of this section.

(b) *Broad Deep-Sea Coral Zone*. The Broad Deep-Sea Coral Zone is bounded on the east by the outer limit of the U.S. Exclusive Economic Zone, and bounded on all other sides by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Discrete Zone column means the point is shared with a Discrete Deep-Sea Coral Zone, as defined in paragraph (c) of this section.

BROAD ZONE

Point	Latitude	Longitude	Discrete zone
1	36°33.02′ N	71°29.33′ W	
2	36°33.02′ N	72°00′ W	
3	36°33.02′ N	73°00′ W	
4	36°33.02′ N	74°00′ W	
5	36°33.02′ N	74°42.14′ W	
6	36°34.44′ N	74°42.23′ W	
7	36°35.53′ N	74°41.59′ W	
8	36°37.69′ N	74°41.51′ W	
9	36°42.09′ N	74°39.07′ W	
10	36°45.18′ N	74°38′ W	
11	36°45.69′ N	74°38.55′ W	
12	36°49.17′ N	74°38.31′ W	
13	36°49.56′ N	74°37.77′ W	
14	36°51.21′ N	74°37.81′ W	
15	36°51.78′ N	74°37.43′ W	
16	36°58.51′ N	74°36.51′ W	(*)
17	36°58.62′ N	74°36.97′ W	(*)
18	37°4.43′ N	74°41.03′ W	(*)
19	37°5.83′ N	74°45.57′ W	(*)
20	37°6.97′ N	74°40.8′ W	(*)
21	37°4.52′ N	74°37.77′ W	(*)
22	37°4.02′ N	74°33.83′ W	(*)
23	37°4.52′ N	74°33.51′ W	(*)
24	37°4.4′ N	74°33.11′ W	(*)
25	37°7.38′ N	74°31.95′ W	
26	37°8.32′ N	74°32.4′ W	
27	37°8.51′ N	74°31.38′ W	
28	37°9.44′ N	74°31.5′ W	
29	37°16.83′ N	74°28.58′ W	
30	37°17.81′ N	74°27.67′ W	
31	37°18.72′ N	74°28.22′ W	
32	37°22.74′ N	74°26.24′ W	(*)
33	37°22.87′ N	74°26.16′ W	(*)
34	37°24.44′ N	74°28.57′ W	(*)
35	37°24.67′ N	74°29.71′ W	(*)
36	37°25.93′ N	74°30.13′ W	(*)
37	37°27.25′ N	74°30.2′ W	(*)
38	37°28.6′ N	74°30.6′ W	(*)
39	37°29.43′ N	74°30.29′ W	(*)
40	37°29.53′ N	74°29.95′ W	(*)
41	37°27.68′ N	74°28.82′ W	(*)
42	37°27.06′ N	74°28.76′ W	(*)
43	37°26.39′ N	74°27.76′ W	(*)
44	37°26.3′ N	74°26.87′ W	(*)
45	37°25.69′ N	74°25.63′ W	(*)
46	37°25.83′ N	74°24.22′ W	(*)
47	37°25.68′ N	74°24.03′ W	(*)
48	37°28.04′ N	74°23.17′ W	
49	37°27.72′ N	74°22.34′ W	
50	37°30.13′ N	74°17.77′ W	
51	37°33.83′ N	74°17.47′ W	
52	37°35.48′ N	74°14.84′ W	
53	37°36.99′ N	74°14.01′ W	
54	37°37.23′ N	74°13.02′ W	

BROAD ZONE—Continued

Point	Latitude	Longitude	Discrete zone
55	37°42.85′ N	74°9.97′ W	
56	37°43.5′ N	74°8.79′ W	
57	37°45.22′ N	74°9.2′ W	
58	37°45.15′ N	74°7.24′ W	(*)
59	37°45.88′ N	74°7.44′ W	(*)
60	37°46.7′ N	74°5.98′ W	(*)
61	37°49.62′ N	74°6.03′ W	(*)
62	37°51.25′ N	74°5.48′ W	(*)
63	37°51.99′ N	74°4.51′ W	(*)
64	37°51.37′ N	74°3.3′ W	(*)
65	37°50.63′ N	74°2.69′ W	(*)
66	37°49.62′ N	74°2.28′ W	(*)
67	37°50.28′ N	74°0.67′ W	(*)
68	37°53.68′ N	73°57.41′ W	(*)
69	37°55.07′ N	73°57.27′ W	(*)
70	38°3.29′ N	73°49.1′ W	(*)
71	38°6.19′ N	73°51.59′ W	(*)
72	38°7.67′ N	73°52.19′ W	(*)
73	38°9.04′ N	73°52.39′ W	(*)
74	38°10.1′ N	73°52.32′ W	(*)
75	38°11.98′ N	73°52.65′ W	(*)
76	38°13.74′ N	73°50.73′ W	(*)
77	38°13.15′ N	73°49.77′ W	(*)
78	38°10.92′ N	73°50.37′ W	(*)
79	38°10.2′ N	73°49.63′ W	(*)
80	38°9.26′ N	73°49.68′ W	(*)
81	38°8.38′ N	73°49.51′ W	(*)
82	38°7.59′ N	73°47.91′ W	(*)
83	38°6.96′ N	73°47.25′ W	(*)
84	38°6.51′ N	73°46.99′ W	(*)
85	38°5.69′ N	73°45.56′ W	(*)
86	38°6.35′ N	73°44.8′ W	(*)
87	38°7.5′ N	73°45.2′ W	(*)
88	38°9.24′ N	73°42.61′ W	(*)
89	38°9.41′ N	73°41.63′ W	
90	38°15.13′ N	73°37.58′ W	
91	38°15.25′ N	73°36.2′ W	(*)
92	38°16.19′ N	73°36.91′ W	(*)
93	38°16.89′ N	73°36.66′ W	(*)
94	38°16.91′ N	73°36.35′ W	(*)
95	38°17.63′ N	73°35.35′ W	(*)
96	38°18.55′ N	73°34.44′ W	(*)
97	38°18.38′ N	73°33.4′ W	(*)
98	38°19.04′ N	73°33.02′ W	(*)
99	38°25.08′ N	73°34.99′ W	(*)
100	38°26.32′ N	73°33.44′ W	(*)
101	38°29.72′ N	73°30.65′ W	(*)
102	38°28.65′ N	73°29.37′ W	(*)
103	38°25.53′ N	73°30.94′ W	(*)
104	38°25.26′ N	73°29.97′ W	(*)
105	38°23.75′ N	73°30.16′ W	(*)
106	38°23.47′ N	73°29.7′ W	(*)
107	38°22.76′ N	73°29.34′ W	(*)
108	38°22.5′ N	73°27.63′ W	(*)
109	38°21.59′ N	73°26.87′ W	(*)
110	38°23.07′ N	73°24.11′ W	
111	38°25.83′ N	73°22.39′ W	
112	38°25.97′ N	73°21.43′ W	
113	38°34.14′ N	73°11.14′ W	(*)
114	38°35.1′ N	73°10.43′ W	(*)
115	38°35.94′ N	73°11.25′ W	(*)
116	38°37.57′ N	73°10.49′ W	(*)
117	38°37.21′ N	73°9.41′ W	(*)
118	38°36.72′ N	73°8.85′ W	(*)
119	38°43′ N	73°1.24′ W	(*)
120	38°43.66′ N	73°0.36′ W	(*)
121	38°45′ N	73°0.27′ W	(*)
122	38°46.68′ N	73°1.07′ W	(*)
123	38°47.54′ N	73°2.24′ W	(*)
124	38°47.84′ N	73°2.24′ W	(*)
125	38°49.03′ N	73°1.53′ W	(*)
126	38°48.45′ N	73°1′ W	(*)

BROAD ZONE—Continued

Point	Latitude	Longitude	Discrete zone
127	38°49.15′ N	72°58.98′ W	(*)
128	38°48.03′ N	72°56.7′ W	(*)
129	38°49.84′ N	72°55.54′ W	(*)
130	38°52.4′ N	72°52.5′ W	(*)
131	38°53.87′ N	72°53.36′ W	(*)
132	38°54.17′ N	72°52.58′ W	(*)
133	38°54.7′ N	72°50.26′ W	(*)
134	38°57.2′ N	72°47.74′ W	(*)
135	38°58.64′ N	72°48.35′ W	(*)
136	38°59.3′ N	72°47.86′ W	(*)
137	38°59.22′ N	72°46.69′ W	(*)
138	39°0.13′ N	72°45.47′ W	(*)
139	39°1.69′ N	72°45.74′ W	(*)
140	39°1.49′ N	72°43.67′ W	(*)
141	39°3.9′ N	72°40.83′ W	(*)
142	39°7.35′ N	72°41.26′ W	(*)
143	39°7.16′ N	72°37.21′ W	(*)
144	39°6.52′ N	72°35.78′ W	(*)
145	39°11.73′ N	72°25.4′ W	(*)
146	39°11.76′ N	72°22.33′ W	
147	39°19.08′ N	72°9.56′ W	(*)
148	39°25.17′ N	72°13.03′ W	(*)
149	39°28.8′ N	72°17.39′ W	(*)
150	39°30.16′ N	72°20.41′ W	(*)
151	39°31.38′ N	72°23.86′ W	(*)
152	39°32.55′ N	72°25.07′ W	(*)
153	39°34.57′ N	72°25.18′ W	(*)
154	39°34.53′ N	72°24.23′ W	(*)
155	39°33.17′ N	72°24.1′ W	(*)
156	39°32.07′ N	72°22.77′ W	(*)
157	39°32.17′ N	72°22.08′ W	(*)
158	39°30.3′ N	72°15.71′ W	(*)
159	39°29.49′ N	72°14.3′ W	(*)
160	39°29.44′ N	72°13.24′ W	(*)
161	39°27.63′ N	72°5.87′ W	(*)
162	39°28.26′ N	72°2.2′ W	(*)
163	39°29.88′ N	72°3.51′ W	(*)
164	39°30.57′ N	72°3.47′ W	(*)
165	39°31.28′ N	72°2.63′ W	(*)
166	39°31.46′ N	72°1.41′ W	(*)
167	39°37.15′ N	71°55.85′ W	(*)
168	39°39.77′ N	71°53.7′ W	(*)
169	39°41.5′ N	71°51.89′ W	
170	39°43.84′ N	71°44.85′ W	(*)
171	39°48.01′ N	71°45.19′ W	(*)
172	39°49.97′ N	71°39.29′ W	(*)
173	39°55.08′ N	71°18.62′ W	(*)
174	39°55.99′ N	71°16.07′ W	(*)
175	39°57.04′ N	70°50.01′ W	
176	39°55.07′ N	70°32.42′ W	
177	39°50.24′ N	70°27.78′ W	
178	39°42.18′ N	70°20.09′ W	
179	39°34.11′ N	70°12.42′ W	
180	39°26.04′ N	70°4.78′ W	
181	39°17.96′ N	69°57.18′ W	
182	39°9.87′ N	69°49.6′ W	
183	39°1.77′ N	69°42.05′ W	
184	38°53.66′ N	69°34.53′ W	
185	38°45.54′ N	69°27.03′ W	
186	38°37.42′ N	69°19.57′ W	
187	38°29.29′ N	69°12.13′ W	
188	38°21.15′ N	69°4.73′ W	
189	38°13′ N	68°57.35′ W	
190	38°4.84′ N	68°49.99′ W	
191	38°2.21′ N	68°47.62′ W	.....

(c) *Discrete Deep-Sea Coral Zones*—(1) *Block Canyon.* Block Canyon discrete deep-sea coral zone is defined by straight lines connecting the following

points in the order stated (copies of a chart depicting this area are available from Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

BLOCK CANYON

Point	Latitude	Longitude	Broad zone
1	39°55.08′ N	71°18.62′ W	(*)
2	39°55.99′ N	71°16.07′ W	(*)
3	39°49.51′ N	71°12.12′ W	
4	39°38.09′ N	71°9.5′ W	
5	39°37.4′ N	71°11.87′ W	
6	39°47.26′ N	71°17.38′ W	
7	39°52.6′ N	71°17.51′ W	
1	39°55.08′ N	71°18.62′ W	(*)

(2) *Ryan and McMaster Canyons.* Ryan and McMaster Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in paragraph (b) of this section.

RYAN AND MCMASTER CANYONS

Point	Latitude	Longitude	Broad zone
1	39°43.84′ N	71°44.85′ W	(*)
2	39°48.01′ N	71°45.19′ W	(*)
3	39°49.97′ N	71°39.29′ W	(*)
4	39°48.29′ N	71°37.18′ W	
5	39°42.96′ N	71°35.01′ W	
6	39°33.43′ N	71°27.91′ W	
7	39°31.75′ N	71°30.77′ W	
8	39°34.46′ N	71°35.68′ W	
9	39°40.12′ N	71°42.36′ W	
1	39°43.84′ N	71°44.85′ W	(*)

(3) *Emery and Uchupi Canyons.* Emery and Uchupi Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in paragraph (b) of this section.

EMERY AND UCHUPI CANYONS

Point	Latitude	Longitude	Broad zone
1	39°37.15′ N	71°55.85′ W	(*)
2	39°39.77′ N	71°53.7′ W	(*)
3	39°39.55′ N	71°47.68′ W	
4	39°30.78′ N	71°36.24′ W	
5	39°27.26′ N	71°39.13′ W	
6	39°28.99′ N	71°45.47′ W	
7	39°33.91′ N	71°52.61′ W	
1	39°37.15′ N	71°55.85′ W	(*)

(4) *Jones and Babylon Canyons.* Jones and Babylon Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column

means the point is shared with the Broad Deep-sea Coral Zone, as defined in paragraph (b) of this section.

JONES AND BABYLON CANYONS

Point	Latitude	Longitude	Broad zone
1	39°28.26′ N	72°2.2′ W	(*)
2	39°29.88′ N	72°3.51′ W	(*)
3	39°30.57′ N	72°3.47′ W	(*)
4	39°31.28′ N	72°2.63′ W	(*)
5	39°31.46′ N	72°1.41′ W	(*)
6	39°30.37′ N	71°57.72′ W	
7	39°30.63′ N	71°55.13′ W	
8	39°23.81′ N	71°48.15′ W	
9	39°23′ N	71°52.48′ W	
1	39°28.26′ N	72°2.2′ W	(*)

(5) *Hudson Canyon*. Hudson Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

HUDSON CANYON

Point	Latitude	Longitude	Broad zone
1	39°19.08′ N	72°9.56′ W	(*)
2	39°25.17′ N	72°13.03′ W	(*)
3	39°28.8′ N	72°17.39′ W	(*)
4	39°30.16′ N	72°20.41′ W	(*)
5	39°31.38′ N	72°23.86′ W	(*)
6	39°32.55′ N	72°25.07′ W	(*)
7	39°34.57′ N	72°25.18′ W	(*)
8	39°34.53′ N	72°24.23′ W	(*)
9	39°33.17′ N	72°24.1′ W	(*)
10	39°32.07′ N	72°22.77′ W	(*)
11	39°32.17′ N	72°22.08′ W	(*)
12	39°30.3′ N	72°15.71′ W	(*)
13	39°29.49′ N	72°14.3′ W	(*)
14	39°29.44′ N	72°13.24′ W	(*)
15	39°27.63′ N	72°5.87′ W	(*)
16	39°13.93′ N	71°48.44′ W	
17	39°10.39′ N	71°52.98′ W	
18	39°14.27′ N	72°3.09′ W	
1	39°19.08′ N	72°9.56′ W	(*)

(6) *Mey-Lindenkohl Slope*. Mey-Lindenkohl Slope discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

MEY-LINDENKOHL SLOPE

Point	Latitude	Longitude	Broad zone
1	38°43′ N	73°1.24′ W	(*)
2	38°43.66′ N	73°0.36′ W	(*)
3	38°45′ N	73°0.27′ W	(*)
4	38°46.68′ N	73°1.07′ W	(*)
5	38°47.54′ N	73°2.24′ W	(*)
6	38°47.84′ N	73°2.24′ W	(*)

MEY-LINDENKOHL SLOPE—Continued

Point	Latitude	Longitude	Broad zone
7	38°49.03′ N	73°1.53′ W	(*)
8	38°48.45′ N	73°1′ W	(*)
9	38°49.15′ N	72°58.98′ W	(*)
10	38°48.03′ N	72°56.7′ W	(*)
11	38°49.84′ N	72°55.54′ W	(*)
12	38°52.4′ N	72°52.5′ W	(*)
13	38°53.87′ N	72°53.36′ W	(*)
14	38°54.17′ N	72°52.58′ W	(*)
15	38°54.7′ N	72°50.26′ W	(*)
16	38°57.2′ N	72°47.74′ W	(*)
17	38°58.64′ N	72°48.35′ W	(*)
18	38°59.3′ N	72°47.86′ W	(*)
19	38°59.22′ N	72°46.69′ W	(*)
20	39°0.13′ N	72°45.47′ W	(*)
21	39°1.69′ N	72°45.74′ W	(*)
22	39°1.49′ N	72°43.67′ W	(*)
23	39°3.9′ N	72°40.83′ W	(*)
24	39°7.35′ N	72°41.26′ W	(*)
25	39°7.16′ N	72°37.21′ W	(*)
26	39°6.52′ N	72°35.78′ W	(*)
27	39°11.73′ N	72°25.4′ W	(*)
28	38°58.85′ N	72°11.78′ W	
29	38°32.39′ N	72°47.69′ W	
30	38°34.88′ N	72°53.78′ W	
1	38°43′ N	73°1.24′ W	(*)

(7) *Spencer Canyon.* Spencer Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

SPENCER CANYON

Point	Latitude	Longitude	Broad zone
1	38°34.14′ N	73°11.14′ W	(*)
2	38°35.1′ N	73°10.43′ W	(*)
3	38°35.94′ N	73°11.25′ W	(*)
4	38°37.57′ N	73°10.49′ W	(*)
5	38°37.21′ N	73°9.41′ W	(*)
6	38°36.72′ N	73°8.85′ W	(*)
7	38°36.59′ N	73°8.25′ W	
8	38°28.94′ N	72°58.96′ W	
9	38°26.45′ N	73°3.24′ W	
1	38°34.14′ N	73°11.14′ W	(*)

(8) *Wilmington Canyon.* Wilmington Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in paragraph (b) of this section.

WILMINGTON CANYON

Point	Latitude	Longitude	Broad zone
1	38°19.04′ N	73°33.02′ W	(*)
2	38°25.08′ N	73°34.99′ W	(*)
3	38°26.32′ N	73°33.44′ W	(*)
4	38°29.72′ N	73°30.65′ W	(*)
5	38°28.65′ N	73°29.37′ W	(*)

WILMINGTON CANYON—Continued

Point	Latitude	Longitude	Broad zone
6	38°25.53′ N	73°30.94′ W	(*)
7	38°25.26′ N	73°29.97′ W	(*)
8	38°23.75′ N	73°30.16′ W	(*)
9	38°23.47′ N	73°29.7′ W	(*)
10	38°22.76′ N	73°29.34′ W	(*)
11	38°22.5′ N	73°27.63′ W	(*)
12	38°21.59′ N	73°26.87′ W	(*)
13	38°18.52′ N	73°22.95′ W	
14	38°14.41′ N	73°16.64′ W	
15	38°13.23′ N	73°17.32′ W	
16	38°15.79′ N	73°26.38′ W	
1	38°19.04′ N	73°33.02′ W	(*)

(9) *North Heyes and South Wilmington Canyons*. North Heyes and South Wilmington Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

NORTH HEYES AND SOUTH WILMINGTON CANYONS

Point	Latitude	Longitude	Broad zone
1	38°15.25′ N	73°36.2′ W	(*)
2	38°16.19′ N	73°36.91′ W	(*)
3	38°16.89′ N	73°36.66′ W	(*)
4	38°16.91′ N	73°36.35′ W	(*)
5	38°17.63′ N	73°35.35′ W	(*)
6	38°18.55′ N	73°34.44′ W	(*)
7	38°18.38′ N	73°33.4′ W	(*)
8	38°19.04′ N	73°33.02′ W	(*)
9	38°15.79′ N	73°26.38′ W	
10	38°14.98′ N	73°24.73′ W	
11	38°12.32′ N	73°21.22′ W	
12	38°11.06′ N	73°22.21′ W	
13	38°11.13′ N	73°28.72′ W	
1	38°15.25′ N	73°36.2′ W	(*)

(10) *South Vries Canyon*. South Vries Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

SOUTH VRIES CANYON

Point	Latitude	Longitude	Broad zone
1	38°6.35′ N	73°44.8′ W	(*)
2	38°7.5′ N	73°45.2′ W	(*)
3	38°9.24′ N	73°42.61′ W	(*)
4	38°3.22′ N	73°29.22′ W	
5	38°2.38′ N	73°29.78′ W	
6	38°2.54′ N	73°36.73′ W	
1	38°6.35′ N	73°44.8′ W	(*)

(11) *Baltimore Canyon*. Baltimore Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area

are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

BALTIMORE CANYON

Point	Latitude	Longitude	Broad zone
1	38°3.29′ N	73°49.1′ W	(*)
2	38°6.19′ N	73°51.59′ W	(*)
3	38°7.67′ N	73°52.19′ W	(*)
4	38°9.04′ N	73°52.39′ W	(*)
5	38°10.1′ N	73°52.32′ W	(*)
6	38°11.98′ N	73°52.65′ W	(*)
7	38°13.74′ N	73°50.73′ W	(*)
8	38°13.15′ N	73°49.77′ W	(*)
9	38°10.92′ N	73°50.37′ W	(*)
10	38°10.2′ N	73°49.63′ W	(*)
11	38°9.26′ N	73°49.68′ W	(*)
12	38°8.38′ N	73°49.51′ W	(*)
13	38°7.59′ N	73°47.91′ W	(*)
14	38°6.96′ N	73°47.25′ W	(*)
15	38°6.51′ N	73°46.99′ W	(*)
16	38°5.69′ N	73°45.56′ W	(*)
17	38°6.35′ N	73°44.8′ W	(*)
18	38°2.54′ N	73°36.73′ W	
19	37°59.19′ N	73°40.67′ W	
1	38°3.29′ N	73°49.1′ W	(*)

(12) *Warr and Phoenix Canyon Complex*. Warr and Phoenix Canyon Complex discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

WARR AND PHOENIX CANYON COMPLEX

Point	Latitude	Longitude	Broad zone
1	37°53.68′ N	73°57.41′ W	(*)
2	37°55.07′ N	73°57.27′ W	(*)
3	38°3.29′ N	73°49.1′ W	(*)
4	37°59.19′ N	73°40.67′ W	
5	37°52.5′ N	73°35.28′ W	
6	37°50.92′ N	73°36.59′ W	
7	37°49.84′ N	73°47.11′ W	
1	37°53.68′ N	73°57.41′ W	(*)

(13) *Accomac and Leonard Canyons*. Accomac and Leonard Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

ACCOMAC AND LEONARD CANYONS

Point	Latitude	Longitude	Broad zone
1	37°45.15′ N	74°7.24′ W	(*)
2	37°45.88′ N	74°7.44′ W	(*)
3	37°46.7′ N	74°5.98′ W	(*)
4	37°49.62′ N	74°6.03′ W	(*)
5	37°51.25′ N	74°5.48′ W	(*)
6	37°51.99′ N	74°4.51′ W	(*)
7	37°51.37′ N	74°3.3′ W	(*)

ACCOMAC AND LEONARD CANYONS—Continued

Point	Latitude	Longitude	Broad zone
8	37°50.63′ N	74°2.69′ W	(*)
9	37°49.62′ N	74°2.28′ W	(*)
10	37°50.28′ N	74°0.67′ W	(*)
11	37°50.2′ N	74°0.17′ W	
12	37°50.52′ N	73°58.59′ W	
13	37°50.99′ N	73°57.17′ W	
14	37°50.4′ N	73°52.35′ W	
15	37°42.76′ N	73°44.86′ W	
16	37°39.96′ N	73°48.32′ W	
17	37°40.04′ N	73°58.25′ W	
18	37°44.14′ N	74°6.96′ W	
1	37°45.15′ N	74°7.24′ W	(*)

(14) *Washington Canyon.* Washington Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

WASHINGTON CANYON

Point	Latitude	Longitude	Broad zone
1	37°22.74′ N	74°26.24′ W	(*)
2	37°22.87′ N	74°26.16′ W	(*)
3	37°24.44′ N	74°28.57′ W	(*)
4	37°24.67′ N	74°29.71′ W	(*)
5	37°25.93′ N	74°30.13′ W	(*)
6	37°27.25′ N	74°30.2′ W	(*)
7	37°28.6′ N	74°30.6′ W	(*)
8	37°29.43′ N	74°30.29′ W	(*)
9	37°29.53′ N	74°29.95′ W	(*)
10	37°27.68′ N	74°28.82′ W	(*)
11	37°27.06′ N	74°28.76′ W	(*)
12	37°26.39′ N	74°27.76′ W	(*)
13	37°26.3′ N	74°26.87′ W	(*)
14	37°25.69′ N	74°25.63′ W	(*)
15	37°25.83′ N	74°24.22′ W	(*)
16	37°25.68′ N	74°24.03′ W	(*)
17	37°25.08′ N	74°23.29′ W	
18	37°16.81′ N	73°52.13′ W	
19	37°11.27′ N	73°54.05′ W	
20	37°15.73′ N	74°12.2′ W	
1	37°22.74′ N	74°26.24′ W	(*)

(15) *Norfolk Canyon.* Norfolk Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in paragraph (b) of this section.

NORFOLK CANYON

Point	Latitude	Longitude	Broad zone
1	36°58.51′ N	74°36.51′ W	(*)
2	36°58.62′ N	74°36.97′ W	(*)
3	37°4.43′ N	74°41.03′ W	(*)
4	37°5.83′ N	74°45.57′ W	(*)
5	37°6.97′ N	74°40.8′ W	(*)
6	37°4.52′ N	74°37.77′ W	(*)
7	37°4.02′ N	74°33.83′ W	(*)

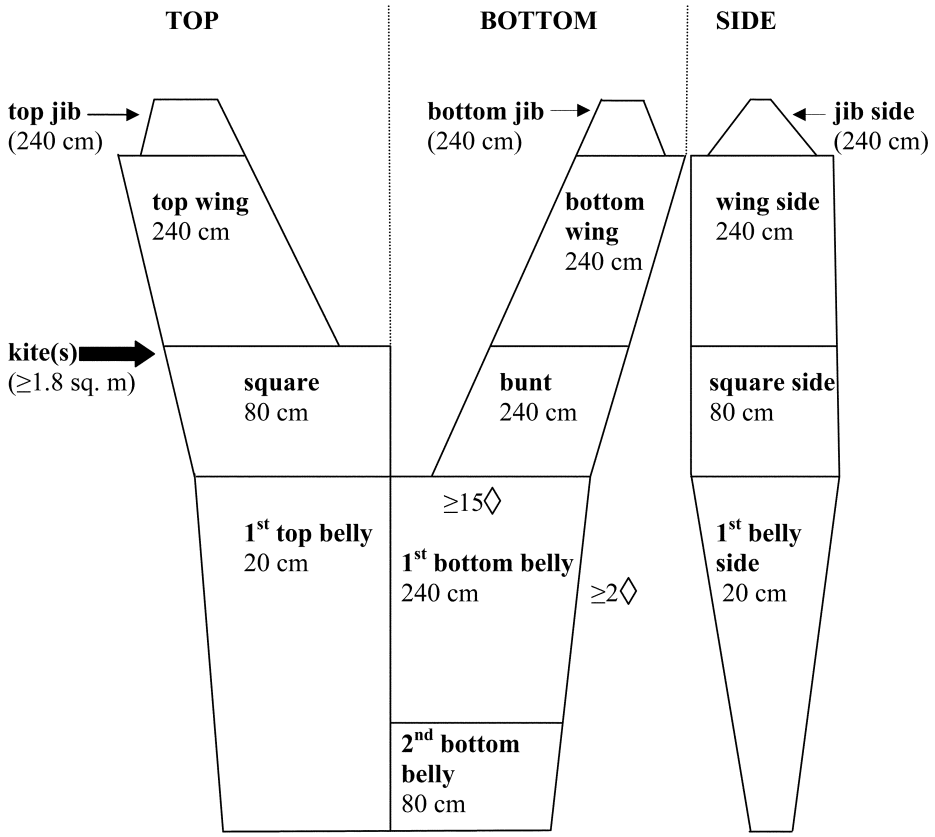
NORFOLK CANYON—Continued

Point	Latitude	Longitude	Broad zone
8	37°4.52′ N	74°33.51′ W	(*)
9	37°4.40′ N	74°33.11′ W	(*)
10	37°4.16′ N	74°32.37′ W	
11	37°4.40′ N	74°30.58′ W	
12	37°3.65′ N	74°3.66′ W	
13	36°57.75′ N	74°3.61′ W	
14	36°59.77′ N	74°30′ W	
15	36°58.23′ N	74°32.95′ W	
16	36°57.99′ N	74°34.18′ W	
1	36°58.51′ N	74°36.51′ W	(*)

(d) *Transiting*. Vessels may transit the Broad and Discrete Deep-Sea Coral Zones defined in paragraphs (b) and (c) of this section, provided bottom-tending trawl nets are out of the water and stowed on the reel and any other fishing gear that is prohibited in these areas is onboard, out of the water, and not deployed. Fishing gear is not required to meet the definition of ''not available for immediate use'' in § 648.2, when a vessel transits the Broad and Discrete Deep-Sea Coral Zones.

FIGURE 1 TO PART 648

Figure 1 to Part 648



Nomenclature for Ruhle Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[77 FR 26127, May 2, 2012]

PARTS 655–659 [RESERVED]