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Magnuson-Stevens Fishery Conservation and Management Act Provisions;  
Fisheries of the Northeastern United States; Annual Catch Limits and  
Accountability Measures; Final Rule

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 100902424–1331–03]

RIN 0648–BA23

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS hereby implements an omnibus amendment to all Mid-Atlantic Fishery Management Council (Council) fishery management plans (FMPs) to bring all Council FMPs into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Act (MSA). This rule is necessary to establish measures that address the MSA-required elements to utilize scientific advice, establish catch limits, and maintain accountability in managing fisheries. There are multiple objectives of the Omnibus Amendment: To establish a comprehensive framework for all Council FMPs that is compliant with the MSA requirements and consistent with the National Standard 1 guidelines issued by NMFS; to implement a process that more formally utilizes scientific recommendations in the establishment of annual catch levels; to establish a framework to derive ACLs with AM backstops; and to establish processes for revisiting and modifying the measures established by the Omnibus Amendment so that overfishing is prevented, stocks are rebuilt as needed, and optimum yield (OY) may be achieved for all managed stocks under the Council's jurisdiction.

**DATES:** Effective October 31, 2011.

**ADDRESSES:** Copies of the Omnibus Amendment document, including the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for the Omnibus Amendment, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The Omnibus Amendment is also

accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

**SUPPLEMENTARY INFORMATION:****Background**

NMFS published a Notice of Availability (NOA) soliciting public input on the Omnibus Amendment in the **Federal Register** on May 23, 2011 (76 FR 29717). NMFS published a proposed rule in the **Federal Register** on June 17, 2011 (76 FR 35578), proposing regulations that would implement the Omnibus Amendment measures. The NOA specifically solicited input on whether NMFS, acting on the behalf of the Secretary of Commerce (Secretary), should approve, partially approve, or disapprove the Omnibus Amendment. Comments were accepted through July 22, 2011, on the NOA. The proposed rule outlined the Acceptable Biological Catch (ABC) control rules for use by the Scientific and Statistical Committee (SSC) in recommending ABC to the Council, a risk policy for use in conjunction with the ABC control rules to inform the SSC of the Council's preferred tolerance for the risk of overfishing a stock, ACLs for all Council-managed stocks except *Loligo* and *Illex* squids, which are exempt from the ACL/AM requirements because they are not overfished and have annual life cycles, comprehensive AMs for all established ACLs, descriptions of the process to review ACL and AM performance, and information on the processes for the future modification of the measures established through the Omnibus Amendment. Comments were accepted on the proposed rule measures through July 18, 2011. Additional background information and detail on why and how the Omnibus Amendment was developed and the overarching requirements the amendment satisfies were provided in the Omnibus Amendment proposed rule (76 FR 35578, June 17, 2011) and are not repeated here.

The Council reviewed the proposed Omnibus Amendment regulations as drafted by NMFS and deemed them to be necessary and appropriate as required by section 303(c) of the MSA. The Omnibus Amendment established the measures described later in this final rule through the following specific FMP amendments: Amendment 13 to the Atlantic Mackerel, Squids, and Butterfish FMP; Amendment 3 to the Atlantic Bluefish FMP; Amendment 2 to the Spiny Dogfish FMP; Amendment 15 to the Summer Flounder, Scup, and

Black Sea Bass FMP; Amendment 16 to the Surfclam and Ocean Quahog FMP; and Amendment 3 to the Tilefish FMP.

**Approved Omnibus Amendment Measures**

NMFS evaluated all comments received by the end of the comment periods, whether specifically directed to the amendment approval decision or the proposed rule measures, in its decisionmaking process. NMFS, on behalf of the Secretary, approved the Omnibus Amendment on August 12, 2011. NMFS now implements through this final rule, the Omnibus Amendment measures recommended by the Council and as contained in the proposed rule, with minor clarifications as outlined in the Changes and Clarifications from the Proposed Rule section later in this preamble. As outlined in the proposed rule and Omnibus Amendment document, this action establishes the framework that the Council and SSC will utilize to establish catch limits, the system for maintaining accountability when ACLs are exceeded, the process to evaluate the continued efficacy of the overall ABC/ACL/AM system, and the methods by which future changes to the overall system may be made. The actual ABC recommendations by the SSC and establishment of ACLs by the Council will occur in subsequent specification setting processes. The approved Omnibus Amendment measures are as follows:

**ABC Control Rules**

This rule implements the four ABC control rule approaches developed by the Council's SSC, as proposed. The framework of these rules places stocks into one of four levels, each with specific criteria for both placement and generation of ABC recommendations, based on the amount of scientific uncertainty as determined by the SSC involved with the stock assessment, available data, life history, and other scientifically related parameters. When possible, the SSC will utilize the overfishing level (OFL) probability distribution in conjunction with the Council's risk policy to derive and recommend ABC to the Council. In instances where OFL cannot be determined, or for stocks that the SSC determines have an unreliable OFL or OFL distribution, the control rules guide the SSC in how ABC shall be derived.

**Council Risk Policy**

This rule implements the risk policy approaches, as proposed. The Council's risk policy is designed to inform the SSC of the Council's tolerance for the

risk of overfishing. The risk policy uses a combination of the ratio of biomass  $(B)/B_{\text{Maximum Sustainable Yield (MSY)}}$  and the life history traits of any given species to set the tolerance for overfishing anywhere from zero (for stocks with a  $B/B_{\text{MSY}}$  of 0.10 or lower, irrespective of life history traits) to a maximum of a 40-percent probability of overfishing for stocks with a typical life history as determined by the SSC and a  $B/B_{\text{MSY}}$  of 1.0 or higher.

The probability of overfishing, as determined by the risk policy, will be applied by the SSC to stocks with either an OFL distribution from the stock assessment or generated by the SSC. If no OFL is available from a stock assessment and no OFL proxy is provided by the SSC when an ABC recommendation is made, the risk policy does not permit increases in ABC until an acceptable OFL has been identified.

For stocks under a rebuilding plan, the risk policy requires that the probability of exceeding the rebuilding target  $F$  ( $F_{\text{REBUILD}}$ ) would be 50 percent, unless modified to a lesser value (*i.e.*, a higher probability that  $F_{\text{REBUILD}}$  would not be exceeded) through a stock rebuilding plan amendment. In instances where the rebuilding plan risk policy and general risk policy result in different approaches and potential ABCs, the SSC will forward the lower of the two resulting ABCs to the Council as a more risk averse approach.

#### *Annual Catch Limits and Accountability Measures*

This final rule implements the ACL and AM measures, as proposed, along with the minor changes outlined in the Changes from the Proposed Rule Section later in this preamble. Under the implemented approach established by the Omnibus Amendment, the Council will rely on the SSC to set ABC at or below OFL, with the reduction from OFL dependent on the amount of scientific uncertainty identified by the SSC. Where applicable, Canadian catch estimates will be removed from the overall ABC to establish a domestic ABC for U.S. catch. The Council will recommend to NMFS ACLs set equal to ABC for all species, with some further subdivision to sector-level ACLs where stocks have pre-existing allocations for both commercial and recreational fisheries. The sum of these sector ACLs will equal the ABC. Annual Catch Targets (ACTs) will be used to address management uncertainty. Council staff or species-specific monitoring committees will review available information and recommend to the Council the amount of reduction from

ACL to ACT necessary to address management uncertainty. Where ACLs are divided into sector-specific ACLs, comparable sector ACTs that address the associated sector-specific management uncertainties will be used. Finally, estimated discards (*i.e.*, dead discarded catch) will be removed from ACTs to yield either commercial or recreational landing targets, as applicable. In summary, the structure for all Council FMPs is:  $\text{OFL} \geq \text{ABC} = \text{ACL}(s) \geq \text{ACT}(s)$ , with scientific uncertainty addressed at the ABC level by the SSC as an offset from OFL, and management uncertainty addressed by the Council following recommendations from Council staff or species-specific monitoring committees at the ACT level as an offset from the ABC/ACL level.

Existing proactive accountability measures, including commercial trip and possession limits, commercial fishery closure authority, and commercial fishery overage repayments are being retained and codified as AMs through the Omnibus Amendment. In addition, new AMs are established to close recreational fisheries when data in hand indicate ACLs have been met or exceeded, as well as establishing lb-for-lb repayment of any catch above established ACLs for all fisheries. Recreational ACLs will be evaluated on a 3-yr rolling average comparison of ACLs to 3-yr average catch. The Omnibus Amendment also provides for adjustments to future ACTs when the causes of ACL overages are not related to landings (*i.e.*, dead discards, a combination of landings and discards, or other sources of stock mortality that may be tracked and subsequently quantified).

#### *Review and Future Modification of Omnibus Amendment Measures*

The Omnibus Amendment establishes that ACL and AM performance reviews will occur at least every 5 yr if ACLs are not routinely exceeded. Consistent with the NS1 guidelines, if the ACL is exceeded for any species with a frequency greater than 25 percent of the time (*i.e.*, more than 1 in 4 yr, or in any 2 consecutive years), the Omnibus Amendment requires the Council to initiate a review of the ACL, ACT, and AM approaches used.

The Omnibus Amendment implements the comprehensive listing of items that may be modified through the Council's specification or framework adjustment processes, as proposed.

#### *Comments and Responses*

NMFS received 11 combined comments on the May 23, 2011 (76 FR 29717), NOA requesting input on the

Secretary's amendment approval decision and the Omnibus Amendment proposed rule (76 FR 35578; June 17, 2011). Comments were submitted by private citizens, a recreational party/charter vessel operator, a commercial fish processing plant operator, a commercial fisheries advocacy group, and the following nongovernmental organizations (NGOs): Environmental Defense Fund; Pew Environmental Group; Marine Fish Conservation Network; National Coalition for Marine Conservation; and Oceana. Some of the comments did not provide input on the amendment approval decision, nor did they address the proposed measures; thus no response to these comments is provided here. Where possible, responses to similar comments on the amendment approval decision and proposed measures have been consolidated.

*Comment 1:* One NGO commented that the Council and NMFS appeared to exempt *Loligo* and *Illex* squids from all the required provisions of the MSA and NS1 guidelines. Specifically, the commenter stated that ABC must be established for both squid species using the ABC control rules and Council risk policy.

*Response:* The Omnibus Amendment only exempts *Loligo* and *Illex* squid from the ACL and AM components of the amendment; all other NS1 guideline requirements apply to these two species. Both the Omnibus Amendment document and the proposed rule state that *Loligo* and *Illex* squid are exempt from the ACL and AM requirements. Neither document provides any additional exemptions from the NS1 guidelines for these species. The Omnibus Amendment approach for both squids is wholly consistent with the annual life cycle exemption found in the note to section 303 of the MSA and the NS1 guidelines at § 600.300(h)(2) and, as such, they are exempt from ACL and AM requirements, but must have status determination criteria, MSY, OY, ABC, and ABC control rules as part of their FMP. As both species already have these required elements in their FMP, NMFS is implementing the Omnibus Amendment as proposed.

*Comment 2:* One NGO raised concerns about the process to modify the ABC control rules and risk policy established by the Omnibus Amendment. The commenter asserted that these two components of the Omnibus Amendment could be modified through the Council's specification process. Specific concerns were raised that the specification process could inappropriately be used to modify the ABC control rules and/or

risk policy, which could minimize public participation and analysis of alternatives. The commenters stated that the Omnibus Amendment must be disapproved until such time that the potential adjustment processes are clarified by the Council.

*Response:* NMFS disagrees that the Omnibus Amendment should be disapproved, as these concerns are unfounded. The Omnibus Amendment and its implementing regulations do not authorize the Council to make such changes through the specification process. Minor adjustments, within a narrowly defined scope, are permitted as outlined in each species-specific framework adjustment process regulation. For all other changes, the Council would be required to utilize an FMP amendment process.

*Comment 3:* One NGO stated that the preferred Omnibus Amendment risk policy (Alternative G, a two-tiered approach based on species life history) provides too great a risk of overfishing and should be disapproved in favor of one of the other proposed risk alternatives (Alternative D, a four-tiered approach considering stock status, replenishment threshold, and productivity, as well as an approach for the maximum permissible risk of overfishing allowed at a  $B/B_{MSY}$  inflection point higher than 1.0). In addition, the commenter expressed concern about the vague life history criteria in the two-tiered Alternative G approach that will be used to distinguish typical and atypical species. The commenter also asserted that the risk policy is largely superfluous, as many of the Council stocks will not have the necessary OFL probability distributions needed to apply the risk policy in a meaningful way. These comments on the risk policy were suggested as grounds upon which NMFS should disapprove the Omnibus Amendment (*i.e.*, allegations that the risk policy will not prevent overfishing.)

*Response:* NMFS disagrees that the amendment should be disapproved and also disagrees that one risk policy alternative must be substituted over another. NMFS has approved and is implementing the Council-preferred risk alternative (Alternative G). NMFS considers that the risk policy, in conjunction with the comprehensive system for deriving ABC and establishing ACL(s) and ACT(s), will provide a sufficiently high probability that overfishing will not occur.

The risk policy under Alternative G establishes a maximum permissible risk of overfishing stocks. For a stock that has a  $B/B_{MSY}$  ratio over 1.0 and has a typical life history, a maximum 40-

percent probability of overfishing or, alternatively expressed as a 60-percent probability that overfishing will not occur, is permitted. This probability is 10 percent lower than the precedent established for rebuilding probability of success, wherein a 50-percent probability of not exceeding the  $F_{REBUILD}$  target was established for summer flounder (see *NRDC v. Daley*). The maximum probability of overfishing for a SSC-determined atypical life history species is 35 percent, which is a 65-percent probability that overfishing will not occur. The NS1 guidelines indicate that the risk tolerance for overfishing a stock is an important component of the ABC control rule and derivation process; however, it is not a requirement that must be specified in an FMP. The NS1 guidelines make clear that a minimum threshold of a 50-percent probability of overfishing is required; thus, NMFS would only have grounds to disapprove the Council's risk policy approach if it permitted a higher probability that overfishing would occur.

All the risk policy alternatives were developed through a comprehensive, collaborative effort of the Council's SSC and the Council. The alternative implemented in the final rule provides a useful and appropriate system to inform the SSC of the Council's tolerance for the risk of overfishing. It is a more robust approach than selecting a fixed percentage, and is more restrictive than the minimum requirement, and sets a maximum probability thereby providing some flexibility to consider current information and circumstances when setting catch levels. NMFS acknowledges that the risk policy is only applicable for stocks assigned to ABC control rule levels 1–3 when an acceptable OFL probability is provided as an assessment output or can be generated by the SSC for level 3 stocks. NMFS also acknowledges that the expert judgment of the SSC will play a critical role in deriving ABC for stocks for which no OFL exists or for which OFL is not viewed as adequate. These stocks will either have the default control rule applied (75 percent of the  $F_{MSY}$  rate for level 3 stocks) or will have thoroughly documented, more conservative approaches designed to ensure overfishing does not occur (level 4 stocks). Additionally, deference is given to the SSC to make determinations as to which Council-managed species have typical or atypical life histories. In all the aforementioned scenarios wherein the SSC may utilize judgment, the process will occur in open meetings and will include documentation and

justification for the decisions reached. This is not inconsistent with the approach contemplated under NS1. The SSC recently applied the risk policy in developing ABC recommendations for the summer flounder, scup, and bluefish stocks. NMFS disagrees that the risk policy is a "paper exercise," as the SSC has begun using both the ABC control rules and risk policy.

*Comment 4:* Some commenters expressed concern that the ABC control rule for deriving ABC for stocks categorized as level 3 and 4, and the conditions for when the SSC might deviate from the ABC control rule framework, are too vague. Some of these comments recommended disapproving the amendment until such time that more information and criteria were added to how ABC would be derived for level 3 and 4 stocks and rules established for when the SSC could deviate from the ABC control rule framework.

*Response:* NMFS disagrees. NS1 guidelines contemplate and authorize SSCs to deviate from ABC control rule calculations, but require the SSC to provide an explanation of why an alternative ABC is more appropriate (§ 600.310(f)(3)). Because the authority to deviate from ABCs calculated using the control rules is explicitly provided under the NS1 guidelines, there was no need to include the generic description of this possibility in the Omnibus Amendment and proposed rule; however, a brief description was included, designed to echo the language of § 600.310(f)(3), for better transparency of the process. In fact, given the language in the NS1 guidelines, the SSC may deviate from any ABC control rule level at any time, provided it can satisfactorily explain why the deviation was necessary and how the alternative methods used are the best approach.

In addition, the level 3 and 4 control rule approaches provide a meaningful framework for the SSC to evaluate the quality of assessment information and uncertainty in deriving an ABC recommendation for the Council. The SSC is expected to conduct its ABC recommendation process in an open, transparent public forum and to provide detailed documentation for the Council and public that provides the information considered, the approaches taken, and why the ABC recommended is consistent with the best available scientific information, to satisfy National Standard 2 requirements. For these reasons, the level 3 and 4 ABC control rules and the description process for recommending alternatively derived ABCs are sufficient to approve the Omnibus Amendment. NMFS

expects that the ABC control rule provides a sufficiently robust approach that utilizes the best available scientific information, and that the ABC recommendations from the SSC will provide a low risk of overfishing any given stock, irrespective of that stock's level assignment. There remain some stock assessments that are limited by the available data and/or understanding of species status. The four-level ABC control rule framework is designed to encourage scientific examination so that stocks may be advanced to levels indicative of more robust understanding. The proposed rule did not repeat that the ABC control rules are a spectrum from least uncertain to most uncertain for levels 1 to 4; this description is in the Omnibus Amendment.

*Comment 5:* Several commenters with recreational fishing interests stated that no recreational ACL overages should be required to pay back lb-for-lb the overage amount through AMs until such time that the Marine Recreational Information Program (MRIP) is operational.

*Response:* NMFS expects the MRIP system for estimating recreational catches to be available for the first year of ACL performance evaluation (*i.e.*, the 2012 FY).

*Comment 6:* One commenter raised concern that the Omnibus Amendment's planned 5-year review of ABC control rules and ACL performance is too long. The commenter was concerned about lost yield if ACLs and ACTs are set "too conservatively," stating that the only opportunity to potentially see less conservative approaches applied may not occur until the 5-yr review.

*Response:* The Omnibus Amendment affords flexibility for the Council to re-examine the performance of any of the measures at any time it deems such a review appropriate. The selection of a planned 5-year detailed performance review was deliberately selected to ensure that ABC, ACL, and ACT setting approaches and subsequent performance will be formally reviewed by the Council on a fixed schedule; however, this does not preclude additional review on a more frequent basis. In addition, the Omnibus Amendment requires a thorough performance review should an ACL be exceeded more than once in a 4-year period, or if an ACL is exceeded in 2 consecutive years. These latter criteria for review may well occur if ACLs have been set "too conservatively," as suggested by the commenter. Were no period expressed for the formal review, the Council would not be obligated to perform any performance review unless

the more than 1-in-4 or 2-consecutive-year ACL overages occurred. The SSC has been reviewing the establishment process and the performance of ABC recommendations annually. It is expected that the level of review involved with the first few years of operation under the ACL management system will require more intensive examination of performance, until such time that the system becomes more stable.

*Comment 7:* One commenter stated that the potential economic impacts of the Omnibus Amendment implemented frameworks should have been prepared by the Council and NMFS. Specifically, the commenter called on NMFS and the Council to prepare a more thorough analysis of potential changes in yield, by species, and the resultant potential economic impacts.

*Response:* NMFS disagrees. The Omnibus Amendment outlines a framework for how catch levels will be established consistent with NS1 requirements and, as such, does not provide information on actual catch levels, by species, the application of risk tolerances, or scientific or management uncertainties. The Council's approach, supported by NMFS, has been that the application of the Omnibus Amendment's framework for setting ABC, ACLs, and ACTs will be fully evaluated as individual species specification processes occur in 2011 for the 2012 FY. These evaluations will provide economic impact analysis of the ABCs, ACLs, ACTs, and other Omnibus Amendment elements, specific to the measures being proposed.

*Comment 8:* One commenter requested clarification on whether the decision to close fisheries will be made based on exceeding the ACL, ACT, or other levels within the Omnibus Amendment framework. The commenter also asked for clarification on why commercial and recreational sector landing-based closure evaluations are different.

*Response:* Closures are tied to the established commercial fishing quotas and recreational harvest limits (for fisheries with recreational sectors) under the Omnibus Amendment. Landings will be monitored during the fishing seasons and proactive AMs utilized to close the respective sectors when landing limits are reached. The commercial closure approaches vary from species to species, but generally the level of commercial landings are monitored in-season on a weekly or daily basis, based on dealer-reported data, and the commercial fishery may be closed when landings projections indicate that the established level will

be reached or exceeded. Some commercial fisheries also have possession or trip limit reductions that occur when specified amounts of landings are reached. For example, the scup Winter I season possession limit is reduced when 80 percent of the Winter I landing limit is reached. Many of these commercial fishery management systems previously existed and were adopted as proactive AMs in the Omnibus Amendment.

Recreational fisheries landings will also be monitored during the fishing season, but because recreational data are available much less frequently (*i.e.*, updates provided in 2-month waves, delivered some 6 weeks after the end of the wave period), the Omnibus Amendment establishes that recreational fishery closures will occur only when data in hand indicate a landing level has already been reached or exceeded. This is to help mitigate the uncertainty that occurs in trying to project recreational landings. The authority to close recreational fisheries based on landings evaluations is a new component adopted in the Omnibus Amendment.

There is not currently the ability to monitor dead discards in season for the purposes of inseason monitoring and potential closure. There will be a post-fishing year accounting to determine dead discards and, in combination with the final landings data, an evaluation of ACL and ACT performance. If in the future, the ability to monitor total catch becomes available on a real-time basis, the Council may consider modifying an FMP to specify when closures will be enacted at either the ACT or ACL level.

*Comment 9:* One commenter stated that Atlantic mackerel and spiny dogfish ABCs should not be reduced to account for Canadian catch.

*Response:* These stocks are managed on a stock-wide basis, including the portion of the stock distributed in Canadian waters. The specification setting process for the two species currently accounts for Canadian catch on the stock prior to establishing catch levels. The Omnibus Amendment established an approach wherein this stock-wide management is preserved and, because the MSA is inapplicable within Canadian jurisdiction, removes the estimated Canadian catch before establishing a domestic ABC, ACL, and ACT for the U.S. portion of the fishery. NMFS agrees that this is a logical approach and accomplishes management of the stocks throughout their range, which is a biologically sound approach.

*Comment 10:* Some commenters alleged that NMFS failed to ensure that

the Omnibus Amendment's EA provided alternatives to the proposed action, and that an Environmental Impact Statement (EIS) should have been required for the Omnibus Amendment. The commenters cited several instances wherein they alleged that additional reasonable and/or feasible alternatives should have been developed and instances where they believe the analyses were incomplete or otherwise insufficient. Alleged instances of insufficient alternatives include an alleged failure to consider additional approaches for dealing with Canadian catch in the Atlantic mackerel and spiny dogfish fisheries, lack of additional alternatives beyond setting ACL = ABC, with emphasis that ACL < ABC should have been developed as an alternative for consideration and analysis, an alleged failure to provide sufficient measures to ensure accountability, including insufficient alternatives for proactive AMs besides ACT. Most of the comments on inadequate analyses centered on alleged insufficient description of the fisheries, species captured, and consideration of stocks in the fishery.

*Response:* Consistent with NEPA, Council for Environmental Quality (CEQ) regulations, and NOAA administrative policy, the Council and NMFS collaborated to prepare an EA to evaluate the significance of the environmental impacts expected as a result of the actions proposed in the Omnibus Amendment. The results of this assessment are provided in section 7.0 of the EA signed by NMFS on July, 28, 2011. The FONSI concludes that because the Omnibus Amendment will merely be formalizing the process of addressing scientific uncertainty and management uncertainty when setting catch limits with a comprehensive system of accountability for catch for each of the managed resources that the impacts of the considered alternatives are administrative in nature. Thus because the measures contained in the Omnibus Amendment largely build on measures already contained in the FMP, which have been in place for many years, NMFS does not expect that the new actions taken in the Omnibus Amendment will have any significant impacts. The commenters provided no evidence, nor even any claims, that the conclusions in the FONSI are not supported by the evidence provided in the EA for this finding.

According to the CEQ regulations, and guidance on the subject, an EIS need only be prepared when an EA or other related analysis identifies significant effects on the environment or if the facts

available to the action agency cannot support the conclusions required in order to make a FONSI. The EA associated with the Omnibus Amendment evaluated the expected direct, indirect, and cumulative impacts likely to result from implementation of the proposed action. The EA, in both form and scope, followed all agency guidelines for an EA associated with an FMP amendment. Had a FONSI determination not been supportable, based on the analyses, then an EIS would have been prepared, consistent with the process outlined in CEQ regulations. Future FMP actions that make use of the Omnibus Amendment processes to establish fishing quotas will evaluate the impacts of those actions as part of the specification setting process.

The Omnibus Amendment considered a reasonable range of alternatives for the decisions made. The EA clearly lays out the alternatives considered for each decision point and explains the reasoning behind the development of those alternatives, and for the ultimate decision between those alternatives. Additionally, Appendix A to the EA provides a discussion of the alternatives that were initially developed, but not given further consideration because they were determined to be either infeasible or insufficient.

The response to comment 9 provides additional information on why NMFS considers the Omnibus Amendment approach for addressing Canadian catch of Atlantic mackerel and spiny dogfish to be acceptable. The response to comment 11 outlines NMFS' response that additional treatment of species captured in target fisheries, and designation of non-target stocks and ecosystem components was not required.

NMFS has determined that the Council's analysis in setting ABCs, ACLs, and AMs was consistent with the NS1 guidelines and met the requirements of NEPA. The NS1 guidelines instruct that in order to prevent overfishing and achieve, on a continuing basis, OY all sources of uncertainty—both scientific and management uncertainty—must be addressed. Scientific uncertainty should be addressed in reducing the ABC from the ACL and management uncertainty can either be addressed in reducing the ACL from the ABC, or through the use of AMs, including ACTs. The purpose of utilizing an ACT is so that, given uncertainty in the amount of catch that will result from the conservation and management measures in the fishery, the ACL will not be exceeded.

The Council acted consistently with these guidelines in deciding to set ACL=ABC for all managed species and to address management uncertainty by setting ACTs. Commenters argue that the decision to set ACL=ABC precludes the Council for considering OY factors when setting the ACL and for that reason that the Council was required to consider alternatives that set the ACL at a level less than the ABC. The response to comment 12 below further explains the Council's approach for considering OY factors. Because the Council, consistent with the NS1 guidelines, chose to address those OY factors that are not considered in setting ABC when setting the ACT, there was no need to consider setting the ACL at a level lower than the ABC; such an alternative would have been superfluous.

Moreover, the Council fully complied with NEPA in developing a reasonable range of alternatives for the processes of setting ABCs, ACLs, and AMs (including ACTs). Where it was feasible, the Council developed multiple proactive and reactive accountability measures designed to prevent the ACLs from being exceeded. Notably while one commenter argues that more proactive accountability measures were required to be considered, the commenter does not point to any specific measures that were overlooked by the Council. The Council considered all reasonable and feasible alternatives, consistent with NEPA.

*Comment 11:* Many of the NGOs alleged that the Omnibus Amendment fails to adequately analyze non-target species captured by fisheries for Mid-Atlantic FMP species and does not adequately consider all fisheries requiring conservation and management. These commenters indicated that the Omnibus Amendment should be disapproved and additional analyses conducted to indicate all species captured in Mid-Atlantic fisheries, reclassification of stocks as target, non-target, stocks in the fishery, and ecosystem components, as needed. One commenter indicated that this information is contained in existing Standardized Bycatch Reporting Methodology (SBRM) reports and should have been used by the Council in the Omnibus Amendment development. Further comments on this topic stated that the Omnibus Amendment should be disapproved because it fails to establish appropriate sub-ACLs for FMP-managed species captured incidentally in Council-managed target fisheries. One commenter stated, as an example, that swordfish captured in the squid trawl

fishery should be managed through a sub-ACL.

*Response:* NMFS disagrees with these interpretations of the NS1 guidelines and disagrees that the Omnibus Amendment's approach to stocks in the fishery, incidentally captured species, and sub-ACLs is deficient and must be disapproved. Section 302(h) of the MSA authorizes each Council to prepare and submit a fishery management plan and amendments for "each fishery under its authority that requires conservation and management." The NS1 guidelines provide that, by default, species managed under FMPs are considered to be stocks in the fishery. 50 CFR 600.310(d). The NS1 guidelines do not require Councils to change which species are or are not included in FMPs, nor do the NS1 guidelines require FMPs to incorporate ecosystem component species classifications. Councils may, but are not required to, use an "ecosystem component species" classification. 50 CFR 600.310(c)-(d). Thus, Councils have had, and continue to have under the MSA and NS1 Guidelines, considerable discretion to define the managed "fishery."

Consistent with the MSA and the NS1 Guidelines, the Council determined that the stocks managed under its FMPs should all continue to be considered stocks in the fishery, exercised its discretion not to add other species in the fishery, and decided against pursuing potential ecosystem component species classification. While the NS1 guidelines explain that a Council should determine which target and non-target species to include in a fishery, the guidelines do not require FMPs to list species in target and non-target species "classifications." See 50 CFR 600.310(d). The main point of classifying stocks is distinguishing between "stocks in the fishery" versus the ecosystem component species category. See 50 CFR 600.310(c)-(d). The MSA also does not require classification into target and non-target classifications. Section 303(a)(2) of the MSA merely requires that an FMP contain a description of the species of fish involved in the fishery; this is not a new requirement, nor is that requirement modified by the NS1 guidelines. The Mid-Atlantic FMPs have, since their inception, approval, and implementation, contained these required descriptions. Amendments to the FMPs, including the Omnibus Amendment, update these listings. The Omnibus Amendment's affected environment incorporates, by reference, detailed analyses of species involved in each fishery. NMFS supports the Council's approach in the Omnibus

Amendment. The level of analyses requested by these collective comments would be wholly appropriate if the Council had elected to add new stocks to the fishery or include them as ecosystem component species. As the Council did not, the level of fishery information provided is sufficient and not grounds for disapproving the amendment.

The designation of sub-ACLs is not required by the MSA or NS1 Guidelines. Although sub-ACLs are utilized in some fisheries in other regions, the Council decided that sub-ACLs were neither reasonable or practical here, given the current constraints on fishery monitoring for Mid-Atlantic stocks. All managed species catch, regardless of whether the FMP is a Mid-Atlantic, South Atlantic, New England, or Secretarial FMP, is fully accounted for under the respective ACLs, irrespective of whether the catch is directed landings, dead discards in the directed fishery, or dead discards incurred while targeting other species. With regard to swordfish, the Secretary of Commerce, and not the Councils, directly manages the fishery under an Atlantic Highly Migratory Species FMP. 16 U.S.C. 1854(g). That Secretarial FMP accounts for the total catch of swordfish, including that which occurs in the squid fishery both as authorized retention for sale and as dead discards (if any). The NS1 guidelines do not require the Secretary and the Council to establish a swordfish sub-ACL in the Atlantic Mackerel, Squids, and Butterfish FMP.

*Comment 12:* Several NGOs commented that NMFS should disapprove or partially disapprove the Omnibus Amendment until approaches to OY are revised by the Council consistent with the NS1 Guidelines. Specifically, these commenters asserted that the Omnibus Amendment must include OY evaluations for all Council-managed species, with specific determination of where OY lies within the overall ABC/ACL/ACT framework for each species. These commenters stated that more specificity must be included in the process descriptions for how ACL or ACTs may be adjusted for OY considerations (*i.e.*, relevant economic, social, or ecological factors), and provide that ACL should be reduced from ABC for OY considerations. In addition, one commenter said it would not be appropriate for OY considerations to be applied at the ACT level, as it is a target, not a limit. Another commenter indicated that specification of OY is missing from several Mid-Atlantic FMP implementing regulations.

*Response:* The Omnibus Amendment's approach to OY is consistent with the MSA and the NS1 guidelines. National Standard 1 of the MSA requires that a fishery management plan or amendment prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. 16 U.S.C. 1851(a)(1). The MSA defines "optimum" with respect to yield from a fishery as being prescribed on the basis of maximum sustainable yield from the fishery, as reduced by relevant economic, social or ecological factor. 16 U.S.C. 1802(33). The Omnibus Amendment amends existing FMPs to address new annual catch limit and other requirements, but retains the FMPs' existing, previously-approved processes for specifying and assessing OY. The Council's FMPs all contain a process for assessing, specifying, identifying, and adjusting OY, as needed, based on relevant economic, social, and ecological factors for each species. The reauthorized MSA did not change National Standard 1 or the definition of OY, and the basic approach to OY is unchanged in the NS1 guidelines. Thus, there is no need to revise the OY processes in the Omnibus Amendment.

The NS1 Guidelines provide that OY can be described at a fishery, stock complex, or stock level and the OY specification process must be included in FMPs or amendments. 50 CFR 600.310(c), (e)(3). While the Councils have codified OY identification approaches for some individual stocks, for other stocks, the Councils address OY at the fishery level, consistent with what is required under the MSA and allowed under the NS1 guidelines. Providing a clear description of OY considerations is an important part of the specification process, and the existing FMPs provide such descriptions.

Because the reauthorized MSA added ACLs and ABC, the NS1 guidelines were revised to clarify the relationships between MSY, OY, ABC, and ACL(s), and these relationships were also discussed in the Omnibus Amendment (p. 27-28). The guidelines state that achieving OY on a continuing basis means producing a long-term series of catches such that the average catch is equal to OY and other conservation objectives of the MSA are met. 50 CFR 600.310(e)(3)(i)(B). The guidelines further state that an FMP must contain measures, including ACLs and AMs, to achieve OY on a continuing basis. However, the MSA and guidelines do not require that OY considerations be addressed when developing ACLs. A

Council may set an ACL lower than ABC to take into account factors related to preventing overfishing or achieving OY, or it may set the ACL equal to ABC and take these additional factors into account when establishing ACTs. See final NS1 guidelines, 74 FR 3178, 3189 (explaining OY, ABC, ACT, ACL relationships in response 33).

Here, the Omnibus Amendment takes the latter approach. The Omnibus Amendment rightly describes OY as the long-term average desired yield from a fishery; OY is not, and should not be confused with, an annual catch limit. Yield to a fishery and total catch are not interchangeable; it is expected that the OY level will vary over time, as scientific and management uncertainties, as well as dead discards are reduced.

NMFS disagrees that the lack of an OY process description or specific criteria for the monitoring committees' consideration to specify OY is grounds for disapproving the amendment. The Omnibus Amendment is designed to provide flexibility to the Council and their committees to adapt their practices over time and in response to changing fishery conditions while meeting its obligations under the MSA, NS1 guidelines, and their FMPs. NMFS considers that the Omnibus Amendment processes lend themselves to a transparent, participatory process that will allow the public and interested parties a mechanism to understand the concerns and issues raised by these commenters with respect to OY.

*Comment 13:* One NGO stated that the Omnibus Amendment lacks required ACT control rules and that the process for how management uncertainty will be addressed is deficient, as it lacks a clearly articulated policy. For these reasons, the commenter states the amendment must be disapproved and these components revised.

*Response:* NMFS disagrees. The Council directed the monitoring committees and staff to set ACTs on a sector-specific basis so that the ACTs would accurately reflect the interannual and intrannual variability in the sources of management uncertainty that vary by sector. ACTs are not required under the NS1 guidelines but are discretionary provisions that can be used as proactive AMs. Similarly, ACT control rules are not required to be specified in the FMP by either the MSA or the NS1 guidelines. The lack of a single overarching formulaic control rule does not weaken the Omnibus Amendment's approaches for addressing management uncertainty through a descriptive process. The sector-specific committees will consider all sources of management

uncertainty within their respective fisheries and provide the technical basis, including any necessary control rules, along with a recommendation for the necessary ACT. NMFS finds this approach to be consistent with the NS1 guidelines that merely state that an ACT control rule may be utilized as part of the ACT-setting process. Thus, NMFS finds the Council's ACT approach wholly consistent with the NS1 guidelines' intent, and sufficient to provide the Council, through its monitoring committees, a robust mechanism for categorizing and quantifying applicable management uncertainty.

*Comment 14:* Several NGOs stated that the Omnibus Amendment is deficient because it does not establish sufficient bycatch and catch monitoring processes. Within these comments, one NGO stated that failure to propose more extensive catch monitoring programs violates NEPA. The commenters claim the Omnibus Amendment is fatally flawed, as a result, and must be disapproved.

*Response:* NMFS disagrees that the Omnibus Amendment must consider new or additional at-sea or other catch monitoring programs. NMFS also disagrees that the Omnibus Amendment's approach for assessing total catch is insufficient and does not agree that the amendment needs to be disapproved based on the grounds raised by these comments. The Omnibus Amendment considering a reasonable range of alternatives to address the monitoring needs of the fisheries. Neither the MSA nor the NS1 guidelines require real-time catch monitoring or discard controls as contemplated in the comment letters. Currently, such programs are beyond the scope of existing resources. The Omnibus Amendment did not explore these options as alternatives, as the alternatives would have been neither reasonable nor feasible.

In lieu of monitoring total catch on a real-time basis, the Omnibus Amendment contemplates a two-part examination of the fisheries: Inseason monitoring of landings (through commercial dealer reports for commercial landings and MRIP for recreational landings) and post-fishing year accounting of dead discards. The monitoring committees will consider the estimated discards for a given specification period (annual or multi-year) and recommend any necessary reductions for uncertainty associated with discard performance to the Council to establish ACT(s). The estimated discards will then be removed from the Council-adjusted ACT to set the landing

level, by sector, to be monitored inseason. Following the completion of the fishing year, the final landings will be added to the re-estimated dead discards to provide total catch. If this total catch exceeds the ACL, AMs will be imposed as soon as possible, consistent with the Omnibus Amendment approach for the species in question.

NMFS acknowledges that this accounting exercise to derive total catch contains some uncertainty, particularly if the discard estimates utilized to offset the ACT or to derive the landing limits before the fishery occurs are variable. However, this is largely why the Council elected to utilize ACTs, so that the likelihood of exceeding ACLs if changes in discard estimates occur could be mitigated. This process is consistent with NS1 guidance. While the Omnibus Amendment establishes a strong process to ensure the likelihood of exceeding ACLs is infrequent by requiring consideration of both scientific and management uncertainty, there are AMs that will be imposed if this does occur, a formal process for examining performance if ACLs are frequently exceeded, and no requirement that catch be set so that ACL is never exceeded. How robust discard estimates are also influences scientific uncertainty as imprecise fishery-related mortality can alter the perception of fishing mortality and stock size.

NMFS considers that the process for catch accounting will be iterative as management under ACLs occurs over the next few years. The process may well require adjustments, and the descriptive nature of the Omnibus Amendment processes is such that the Council and NMFS have some flexibility to make modifications that improve the process and management such that advancements are realized and overfishing is prevented. In addition, should greater monitoring resources or systems become available, the Omnibus Amendment does not require modification to incorporate the information generated by such systems. The data could be utilized as soon as they become operational.

*Comment 15:* One commenter alleged that the Omnibus Amendment fails to satisfy the MSA deadline of establishing ACLs and AMs by the 2011 FY, particularly because the Omnibus Amendment establishes a process for setting catch, but does not actually provide specific limits for the 2011 FY.

*Response:* NMFS asserts that the implementation of the final Omnibus Amendment before the end of the 2011 FY satisfies the MSA requirement.



*Comment 16:* One commenter stated that the Omnibus Amendment must be disapproved because ACT will not leave a margin for management uncertainty and that ACTs are inadequate because they do not have AMs.

*Response:* NMFS disagrees. The use of ACTs in the Omnibus Amendment is wholly consistent with NS1 guidelines. The NS1 guidelines do not require that ACL be set lower than ABC, nor that ACT be used. ACTs are not required in the MSA, but only ACLs and appropriate AMs. The Secretary may assume that, if  $OFL = ABC = ACL = ACT$ , overfishing will not be prevented, but the Council's process will likely include some reductions at either the OFL to ABC level for scientific uncertainty, at the ACL to ACT level for management uncertainty, or both. This provides a strong system to prevent overfishing, consistent with the NS1 guidelines.

Under the Omnibus Amendment measures, the Council is expected to reduce catch from the ACL to the ACT to account for management uncertainty. In years when an ACT is exceeded but the ACL is not, the management buffer may be adjusted in subsequent years, but no AMs in the form of lb-for-lb payback of the ACT overage are required. If the ACL is exceeded in any year, AMs will be invoked as described in the Omnibus Amendment for the FMP and species in question. There is no requirement that lb-for-lb overage repayment AMs be triggered if ACTs are exceeded. However, there are AMs operative within the ACT as there will be closures when commercial and recreational landing limits are reached. As such, ACTs will be used as proactive measures, to reduce the likelihood that ACLs will be exceeded. The ACT is, in fact, itself an AM (§ 600.310(f)(2)(v)).

*Comment 17:* One NGO stated that the Omnibus Amendment must be disapproved because NMFS's proposed AM measures are not an accurate reflection of the Council's intent. The commenters alleged that recreational sector fishery lb-for-lb overage repayments must occur in the year following the overage.

*Response:* The commenter may have misinterpreted the description of the overage repayment system. The operation of the overage repayment system is clarified here and is consistent with the Council's intent.

NMFS attempted to explain, in the proposed rule, that the data for both commercial and recreational landings and discards will not likely be available immediately following the FY conclusion. For example, when ACLs are set for the 2013 FY, the final commercial and recreational landings

and discard information is not expected to be available until after the first quarter of 2014. Given that the specification process for 2014 will begin in mid-2013 and culminate in rulemaking for January 1 implementation the last quarter of 2013, it will not be possible to make adjustments for any ACL overage when the initial 2014 specifications are established.

The Omnibus Amendment retains the existing commercial overage repayments that were in place prior to the development of ACLs. NMFS routinely makes adjustments to specifications for known commercial overages and will continue to do so in the Omnibus Amendment process. Using the prior example, if known commercial overages are available by October 31, 2013, NMFS can adjust the 2014 commercial specifications accordingly through rulemaking. Then, in late 2014, the totality of the 2013 commercial FY data will be examined to ensure that any additional overages or adjustments resulting from incorporation of final commercial landings information, if needed, will be performed for the 2015 commercial specifications. The system is configured so double counting does not occur, but, as the example illustrates, it is possible that commercial overage repayment AMs may occur 1 full year removed from the FY in which they occurred. As stated before, this is not new. Under the Omnibus Amendment, there will also be an examination of commercial catch data (*i.e.*, landings + dead discards). This process may function similarly to the example or, using the example timeframe, may occur in 2014 for application to the 2015 FY for a 2013 catch overage of the ACL (*i.e.*, dead discard caused overage of the ACL).

Recreational fisheries have not been managed in a system analogous to the commercial example provided above. Landings data are not available in as timely a fashion as commercial data. Using the example years previously discussed, NMFS may only be able to evaluate 2013 recreational landings through June 2013 during the 2014 specification rulemaking process. While it is possible that a recreational overage may have occurred by that date, historic data indicate such an occurrence should be rare. As a result, NMFS may not be able to make informed examination of 2013 recreational overages until after the first quarter in 2014. NMFS may make adjustments to the recreational harvest limit when this information becomes available, through the recreational management measures rulemaking, typically conducted in the

first and second quarters. However, if the final data are not available until later in 2014, if there is no ongoing regulatory mechanism to adjust the recreational harvest limit and recreational measures concurrently or for other as of yet unforeseen reasons, NMFS may have to wait to adjust the 2015 FY recreational sector ACL during 2014 for an overage accrued in the 2013 recreational fishery.

The Omnibus Amendment provides the flexibility in describing how AMs will function so that NMFS can ensure that any necessary adjustments will occur consistent with the data necessary to evaluate ACL performance. It is expected that these data systems and delivery timing may improve in the future. Should this be the case, the Omnibus Amendment provides flexibility for NMFS to modify the AM repayment process, as needed, without needing to amend the ACL process. NMFS considers that this system will function best if ACL overages are avoided by well-established sector ACLs, mitigating the need to trigger AMs all together. See response to comment 18 for additional information.

*Comment 18:* One NGO commented that the description of the AM process indicates that adjustments, through overage repayments, will be made through the Council's specification process. The commenter states that the Omnibus Amendment must be disapproved for this reason, asserting that AMs must be automatic and non-discretionary.

*Response:* This is an apparent misunderstanding by the commenter. As explained in the response to Comment 17, NMFS, not the Council, will make automatic lb-for-lb overage repayments for ACL overages through the specification rulemaking. The AMs are automatic and do not involve discretion on either NMFS's or the Council's part. For this reason, the AMs implemented by the Omnibus Amendment are consistent with the NS1 guidelines.

*Comment 19:* One commenter stated that the Omnibus Amendment must be disapproved because it does not consider catch outside its jurisdiction. The example cited was summer flounder, a Council-managed species, which is captured and landed in the Atlantic sea scallop fishery, managed by the New England Fishery Management Council. The commenter alleged that the Omnibus Amendment fails to consider catch from all sources and, thus, must be disapproved. The commenter also indicated that the Omnibus Amendment failed to adequately examine alternatives for sub-ACLs in examples such as the one

provided. In so doing, the commenter alleged that the Omnibus Amendment violates NEPA.

*Response:* NMFS disagrees with the contention that the Omnibus Amendment's approach for addressing total catch is fatally flawed. All federally managed fish landed for commercial sale within the region, irrespective of whether the fish are captured in a Council-managed fishery or in a fishery managed by another Council or the Secretary, will be counted toward the total annual landings for that species. This method of accounting is not new, and will continue under the Omnibus Amendment. Similarly, all dead discards of a species such as summer flounder will be attributed to the total catch estimation of summer flounder. Thus, the Omnibus Amendment's system of catch accounting does, in fact, consider catch from all directed fishery and other sources. The NS1 guidelines do not require the establishment of sub-ACLs for species captured incidentally in other directed fisheries. See response to comment 11 for additional information.

*Comment 20:* One commenter alleged that the decisions made to implement the Omnibus Amendment are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and, as such, are a violation of the Administrative Procedure Act (APA) and must be set aside as unlawful. The commenter did not provide specific information in support of their general assertion that the APA had been violated by implementing the Omnibus Amendment.

*Response:* NMFS disagrees. The Omnibus Amendment measures are in accordance with the requirements of NS1 guidelines and the MSA and, as such, are not arbitrary. The Omnibus Amendment measures were not impulsively derived or implemented; instead, a lengthy, transparent process was utilized by the Council, its committees, and the Fishery Management Action Team (FMAT) tasked with developing alternatives and measures. NMFS undertook all required elements of announcing the amendment and proposed rule availability for review and comment and is responding, in full, to all relevant comments provided on the amendment and proposed measures. Neither the Council nor NMFS has abused discretion in following the required development and implementation processes required for the amendment. NMFS is confident that the APA has not been violated in any manner and the Omnibus Amendment

is being implemented consistent with applicable laws.

#### **Changes and Clarifications From the Proposed Rule**

*Atlantic bluefish.* The process for deriving ACT and Total Allowable Landings (TAL) was clarified. The proposed rule correctly outlined the process required to derive ACT and TAL from the recommended ABC; however, additional language on where the commercial and recreational allocation shall be addressed was added for a more clear description. These changes are consistent with both the proposed rule and the Omnibus Amendment.

*Atlantic mackerel.* As was noted in the Omnibus Amendment proposed rule, the Council took final action on Amendment 11 to the Atlantic Mackerel, Squids, and Butterfish FMP (Amendment 11) in October 2010 and NMFS published an Amendment 11 NOA and proposed rule on August 1, 2011 (76 FR 45742). While the proposed rule for Amendment 11 does contain a proposed recreational fishery allocation for mackerel, the final approval decision and final rule for Amendment 11 measures will occur after the final Omnibus Amendment measures in this rule are effective. Therefore, the final Omnibus Amendment measures reflect the various Atlantic mackerel measures designed to function without a formal recreational allocation. If the final Amendment 11 measures, when approved, contain the recreational allocation for Atlantic mackerel, the final rule to implement Amendment 11 measures will also modify Omnibus Amendment measures, as needed.

*Butterfish.* In the interim between deeming the proposed Omnibus Amendment regulations and this final rule, the Council initiated the process to develop 2012 specifications for the Atlantic Mackerel, Squids, and Butterfish FMP. During this process, the Council discovered that the method for deriving the butterfish cap in the *Loligo* fishery with respect to the OFL/ABC/ACT framework was not entirely clear in either the Omnibus Amendment document or the proposed regulations. The Council held discussion during its June 2011 meeting to clarify the intent of the butterfish cap to be derived as a percentage of the ACT rather than the ABC. Following this discussion, the Council provided a comment on the proposed rule to clarify how the butterfish cap should be devised under the OFL/ABC/ACT framework. NMFS agrees with the Council's clarification and is implementing, though this final rule, revisions to the butterfish

regulations that are consistent with the Council-revised information.

*Summer flounder.* In the interim between the publication of the NOA and Omnibus Amendment proposed rule, the 2011 recreational management measures were finalized (76 FR 38387, June 30, 2011). The amendatory language with respect to summer flounder recreational management measures has been revised from the proposed rule to reflect the final 2011 recreational management measures.

*Relationship of ABC to ACL.* NMFS has modified several erroneous regulations for spiny dogfish, summer flounder, scup, black sea bass, Atlantic bluefish, surfclam, ocean quahog, and tilefish that indicated ACL could be set less than or equal to ABC. Several public comments were received about the Omnibus Amendment's treatment of ABC in relation to ACL, specifically if ACL could be reduced from the ABC level. The Council's Omnibus Amendment EA document contains some conflicting language on this matter, with language under the discussion of OY (page 27–8) contemplating that adjustments based on OY considerations could occur at either the ACL or ACT level; however, examination of the species-specific information contained in the document clearly articulates that ACL will be set equal to ABC. The final regulations issued by this rule correctly indicate that ABC=ACL for all species. Additional discussion of OY occurs in the Comment and Responses section of this preamble.

*Additional Editorial and Corrective Changes.* Minor changes in language not affecting the content or intent of the regulations have been made between the proposed and final rules. These changes are designed to improve readability, grammar, and punctuation; maintain consistency between FMPs; and generally improve the final implementing regulations.

#### **Classification**

The Administrator, Northeast Region, NMFS, determined that the Omnibus Amendment to the Atlantic Mackerel, Squids, and Butterfish, Atlantic Bluefish; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; the Surfclam and Ocean Quahog; and the Tilefish FMPs is necessary for the conservation and management of the Atlantic mackerel, butterfish; Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, surfclam, ocean quahog, and the tilefish fisheries and that it is consistent with the MSA and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 20, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

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

**§ 648.13 [Amended]**

■ 2a. Section 648.13(i)(2)(iii) is amended by removing “§ 648.123(a)(2), (3), and (4)” and adding “§ 648.125(a)(2), (3), and (4)” in its place.

■ 2b. Section 648.14 is amended as follows:

■ a. Paragraph (o)(1)(vi) is amended by removing “§§ 648.122 and 648.123(a)” and adding “§§ 648.124 and 648.125(a)” in its place.

■ b. Paragraph (u)(2)(vi) is amended by removing “§ 648.291(d)(3) or § 648.291” and adding “§ 648.294(d)(3) or § 648.295” in its place.

■ c. Paragraph (u)(2)(vii) is added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

- (u) \* \* \*
- (2) \* \* \*

(vii) Land or possess tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental fishery is closed pursuant to § 648.245(b), unless fishing under a valid tilefish IFQ allocation permit as

specified in § 648.249(a), or engaged in recreational fishing.

\* \* \* \* \*

■ 3. Section 648.20 is revised to read as follows:

**§ 648.20 Mid-Atlantic Fishery Management Council ABC control rules.**

The SSC shall review the following criteria, and any additional relevant information, to assign managed stocks to a specific control rule level when developing ABC recommendations. The SSC shall review the ABC control rule level assignment for stocks each time an ABC is recommended. The ABC may be recommended for up to 3 years for all stocks, with the exception of 5 years for spiny dogfish. The SSC may deviate from the control rule methods or level criteria and recommend an ABC that differs from the result of the ABC control rule calculation; however, any such deviation must include the following: A description of why the deviation is warranted, description of the methods used to derive the alternative ABC, and an explanation of how the deviation is consistent with National Standard 2.

(a) *Level 1 criteria.* (1) Assignment of a stock to Level 1 requires the SSC to determine the following:

(i) All important sources of scientific uncertainty are captured in the stock assessment model;

(ii) The probability distribution of the OFL is calculated within the stock assessment and provides an adequate description of the OFL uncertainty;

(iii) The stock assessment model structure and treatment of the data prior to use in the model includes relevant details of the biology of the stock, fisheries that exploit the stock, and data collection methods;

(iv) The stock assessment provides the following estimates: Fishing mortality rate (F) at MSY or an alternate maximum fishing mortality threshold (MFMT) to define OFL, biomass, biological reference points, stock status, OFL, and the respective uncertainties associated with each value; and

(v) No substantial retrospective patterns exist in the stock assessment estimates of fishing mortality, biomass, and recruitment.

(2) *Level 1 ABC determination.* Stocks assigned to Level 1 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC’s risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(b) *Level 2 criteria.* (1) Assignment of a stock to Level 2 requires the SSC to determine the following:

(i) Key features of the stock biology, the fisheries that exploit it, and/or the data collection methods for stock information are missing from the stock assessment;

(ii) The stock assessment provides reference points (which may be proxies), stock status, and uncertainties associated with each; however, the uncertainty is not fully promulgated through the stock assessment model and/or some important sources of uncertainty may be lacking;

(iii) The stock assessment provides estimates of the precision of biomass, fishing mortality, and reference points; and

(iv) The accuracy of the minimum fishing mortality threshold and projected future biomass is estimated in the stock assessment using ad hoc methods.

(2) *Level 2 ABC determination.* Stocks assigned to Level 2 by the SSC will have the ABC derived by applying acceptable probability of overfishing from the MAFMC’s risk policy found in § 648.21(a) through (d) to the probability distribution of the OFL.

(c) *Level 3 criteria.* (1) Assignment of a stock to Level 3 requires the SSC to determine that the stock assessment attributes are the same as those for a Level 2 assessment listed in § 648.20(d)(1) through (4), except that the stock assessment does not contain an estimated probability distribution of OFL or the stock assessment provided OFL probability distribution is judged by the SSC to not adequately reflect uncertainty in the OFL estimate.

(2) *Level 3 ABC determination.* Stocks assigned to Level 3 will have ABC derived by one of the following two methods:

(i) The SSC will derive the ABC by applying the acceptable probability of overfishing from the MAFMC’s risk policy found in § 648.21(a) through (d) to an SSC-adjusted OFL probability distribution. The SSC will use default levels of uncertainty in the adjusted OFL probability distribution based on literature review and evaluation of control rule performance; or,

(ii) If the SSC cannot develop an OFL distribution, a default control rule of 75 percent of the  $F_{MSY}$  value will be applied to derive ABC.

(d) *Level 4 criteria.* (1) Assignment of a stock to Level 4 requires the SSC to determine that none of the criteria for Levels 1–3 found in § 648.20(a) through (c) were met.

(2) *Level 4 ABC determination.* Stocks assigned to Level 4 will have ABC derived using control rules developed on a case-by-case basis by the SSC based on biomass and catch history and

application of the MAFMC's risk policy found in § 648.21(a) through (d).

■ 4. Section 648.21 is revised to read as follows:

**§ 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 than 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) 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.

■ 5. Section 648.22 is revised to read as follows:

**§ 648.22 Atlantic mackerel, squid, and butterflyfish specifications.**

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including Research Set-Aside (RSA), DAH, and DAP for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) ACL; ACT including RSA, DAH, DAP; bycatch level of the TALFF, if any; and butterflyfish mortality cap for the *Loligo* fishery for butterflyfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) ACL; commercial ACT, including RSA, DAH, DAP; JVP if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) IOY, including RSA, DAH, and DAP for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* 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) *Loligo 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) *Loligo*—The catch associated with a fishing mortality rate of  $F_{Threshold}$ .

(B) *Illex*—Catch associated with a fishing mortality rate of  $F_{MSY}$ .

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of RSA and DAH. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RSA, if applicable.

(2) *Mackerel*—(i) ABC. The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) ACL. The ACL or Domestic ABC is calculated using the formula  $ACL = ABC - C$ , where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

(iii) OY. OY may not exceed the ACL, and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of  $MSY$ , as reduced by social, economic, and ecological factors.

(iv) ACT. The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the specifications process.

(A) *Commercial sector ACT.* Commercial ACT is composed of RSA, DAH, dead discards, and TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

(1) Total world export potential of mackerel producing countries.

(2) Total world import demand of mackerel consuming countries.

(3) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(4) Increased/decreased revenues to the U.S. from foreign fees.

(5) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(6) Increased/decreased revenues to U.S. processors and exporters.

(7) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(8) Increases/decreases in U.S. processing productivity.

(9) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(B) *Recreational sector ACT.*

Recreational ACT is composed of RSA, dead discards, and the Recreational Harvest Limit (RHL).

(v) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the mackerel ACL at least every 5 years.

(A) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any two consecutive years), the Squid, Mackerel, and Butterfish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not exceeded as frequently.

(B) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(C) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

(3) *Butterfish*—(i) *ABC.* The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The butterflyfish 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 butterflyfish ACL will be set equal to the butterflyfish 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 butterflyfish 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 butterflyfish mortality cap will be based on the ACT and allocated to the *Loligo* fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

(vi) Any underages of the butterflyfish mortality cap for Trimesters I or II will be applied to Trimester III of the same year, and any overages of the butterflyfish mortality cap for Trimesters I and II will be applied to Trimester III of the same year.

(vii) *Performance review.* The Squid, Mackerel, and Butterfish Committee shall conduct a detailed review of fishery performance relative to the butterflyfish ACL in conjunction with review for the mackerel fishery, as outlined in this section.

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) RSA set from a range of 0 to 3 percent of:

(i) The IOY for *Loligo* and/or *Illex*.

(ii) The commercial and/or recreational ACT for mackerel.

(iii) The ACT for butterflyfish.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of *Loligo*, *Illex*, and butterflyfish that may be retained, possessed, and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational harvest limit, set after reductions for research quotas.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

(13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

(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 butterflyfish 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 superseded 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 Loligo squid commercial quota.* (1) A commercial quota for *Loligo* 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).

■ 6. Section 648.23 is revised to read as follows:

**§ 648.23 Mackerel, squid, and butterfish gear restrictions.**

(a) *Mesh restrictions and exemptions.*

(1) Vessels subject to the mesh restrictions in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or, for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 2<sup>1</sup>/<sub>8</sub> inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1<sup>7</sup>/<sub>8</sub> inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction.*

Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2<sup>1</sup>/<sub>8</sub> inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1<sup>7</sup>/<sub>8</sub> inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure. “Top of the regulated portion of the net” means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend,

provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this paragraph (a)(3)(i), head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery*. Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements in paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 7/8 inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

Point	N. lat.	W. long.
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'
M9	42°10.0'	67°10.0'
M10	41°18.6'	66°24.8'
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'
M16	40°18.7'	69°40.0'
M17	40°21.0'	71°03.0'
M18	39°41.0'	72°32.0'
M19	38°47.0'	73°11.0'
M20	38°04.0'	74°06.0'
M21	37°08.0'	74°46.0'
M22	36°00.0'	74°52.0'
M23	35°45.0'	74°53.0'
M24	35°28.0'	74°52.0'

(4) *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 unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. 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 in accordance with the provisions of paragraph (b) of this section. 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) *Definition of "not available for immediate use."* Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

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

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference.

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

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

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

(iii) *On-reel stowage*. (A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the net; and

(C) The codend is removed and stored below deck.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling*

*Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area*.

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

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

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

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

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

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

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

(c) *Mesh obstruction or constriction*. The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration, or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthened). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

■ 7. Section 648.24 is revised to read as follows:



**§ 648.24 Fishery closures and accountability measures.**

(a) *Fishery closure procedures*—(1) *Loligo*. NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(i) If the Regional Administrator determines that the Trimester I closure threshold has been under-harvested by 25 percent or more, then the amount of the underharvest shall be reallocated to Trimester II and Trimester III, as specified at § 648.22(f)(2), through notice in the **Federal Register**.

(ii) [Reserved]

(2) *Illex*. NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

(b) *Mackerel AMs*. (1) *Mackerel commercial sector EEZ closure*. NMFS shall close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

(2) *Mackerel commercial landings overage repayment*. If the mackerel ACL is exceeded, and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Mackerel recreational sector EEZ closure*. NMFS shall close the recreational mackerel fishery in the EEZ when the Regional Administrator determines that recreational landings have exceeded the RHL. This determination shall be based on observed landings and will not utilize projections of future data.

(4) *Mackerel recreational landings overage repayment*. If the mackerel ACL is exceeded, and the recreational fishery

landings are responsible for the overage, then landings in excess of the RHL will be deducted from the RHL for the following year, as a single-year adjustment.

(5) *Non-landing AMs, by sector*. In the event that the ACL is exceeded, and that the overage has not been accommodated through other landing-based AMs, but is attributable to either the commercial or recreational sector (such as research quota overages, dead discards in excess of those otherwise accounted for in management uncertainty, or other non-landing overages), then the exact amount, in pounds, by which the sector ACT was exceeded will be deducted from the following year, as a single-year adjustment.

(6) *Mackerel ACL overage evaluation*. The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by March 31 of the fishing year in which the deductions will be made.

(c) *Butterfish AMs*—(1) *Butterfish EEZ closure*. NMFS shall close the directed butterfly fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterflyfish DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified at § 648.26.

(2) *Butterfish ACL overage repayment*. If the butterflyfish 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 Loligo fishery*. NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 80 percent of the butterflyfish mortality cap has been harvested in Trimester I, and/or when 90 percent of the butterflyfish mortality cap has been harvested in Trimester III.

(4) *Butterfish ACL overage evaluation*. The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by March 31 of the

fishing year in which the deductions will be made.

(d) *Notification*. Upon determining that a closure is necessary, the Regional Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterflyfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the **Federal Register**.

■ 8. Section 648.25 is revised to read as follows:

**§ 648.25 Atlantic Mackerel, squid, and butterflyfish 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 Butterflyfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process*. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions;



regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs); any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification. Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, the MAFMC must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2)

of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

■ 9. Section 648.26 is revised to read as follows:

**§ 648.26 Mackerel, squid, and butterfish possession restrictions.**

(a) *Atlantic mackerel.* During a closure of the commercial Atlantic mackerel fishery that occurs prior to June 1, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the commercial fishery for mackerel that occurs on or after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day.

(b) *Loligo.* During a closure of the directed fishery for *Loligo*, vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex.* During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a

vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish.* (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

■ 10. Section 648.27 is added to subpart B read as follows:

**§ 648.27 Observer requirements for the Loligo fishery.**

(a) A vessel issued a *Loligo* and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

(b) A vessel that has a representative provide notification to NMFS as

described in paragraph (a) of this section may only embark on a *Loligo* trip without an observer if a vessel representative has been notified by NMFS that the vessel has received a waiver of the observer requirement for that trip. NMFS shall notify a vessel representative whether the vessel must carry an observer, or if a waiver has been granted, for the specified *Loligo* trip, within 24 hr of the vessel representative's notification of the prospective *Loligo* trip, as specified in paragraph (a) of this section. Any request to carry an observer may be waived by NMFS. A vessel that fishes with an observer waiver confirmation number that does not match the *Loligo* trip plan that was called in to NMFS is prohibited from fishing for, possessing, harvesting, or landing *Loligo* except as specified in paragraph (c) of this section. Confirmation numbers for trip notification calls are only valid for 48 hr from the intended sail date.

(c) A vessel issued a *Loligo* and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing 2,500 lb (1.13 mt) or more of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a *Loligo* and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land 2,500 lb (1.13 mt) or more of *Loligo* per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or e-mail address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

■ 11. Section 648.70 is revised to read as follows:

**§ 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.

■ 12. Section 648.71 is revised to read as follows:

**§ 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).

■ 13. Section 648.72 is revised to read as follows:

**§ 648.72 Surfclam and ocean quahog specifications.**

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator.

Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section. The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L). The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L). Quotas for surfclams and ocean quahogs may be specified below these ranges if the ABC recommendation of the SSC limits the ACL to a value less than the minimum of the range indicated.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 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 within the ranges specified for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) **Public review.** Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. The Regional Administrator shall consider public comments received, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register**. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act or the objectives of the Atlantic Surfclam and Ocean Quahog FMP or other applicable law.

(b) **Interim quota modifications.** Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of up to 3 years, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for up to a 3-year period.

(c) **Annual quotas.** The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. At the end of a multiyear quota period, NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

■ 14. Section 648.73 is revised to read as follows:

**§ 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, then the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

■ 15. Section 648.74 is revised to read as follows:

**§ 648.74 Annual individual allocations.**

(a) **General.** (1) Each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (*i.e.*, October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.72. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.77. Amounts of allocation of 0.5 cages or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 cages created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in cages and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

(2) The Regional Administrator may, after publication of a fee notification in

the **Federal Register**, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) **Transfers—(1) Allocation percentage.** Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) **Cage tags.** Cage tags issued pursuant to § 648.77 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) **Review.** If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson-Stevens Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

■ 16. Section 648.75 is revised to read as follows:

**§ 648.75 Shucking at sea and minimum surfclam size.**

(a) **Shucking at sea—(1) Observers.** (i) The Regional Administrator may allow the shucking of surfclams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surfclams and ocean quahogs harvested in the shell prior to shucking.

(ii) Any vessel owner may apply in writing to the Regional Administrator to shuck surfclams or ocean quahogs at sea. The application shall specify: Name

and address of the applicant; permit number of the vessel; method of calculating the amount of surfclams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip.

(iii) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(iv) Any observer shall certify at the end of each trip the amount of surfclams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(2) *Conversion factor.* (i) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surfclams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surfclams or ocean quahogs harvested in the shell.

(ii) The Regional Administrator shall publish notification in the **Federal Register** specifying a conversion factor, together with the data used in its calculation, for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the **Federal Register** specifying the conversion factor.

(iii) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surfclams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(b) *Minimum surfclam size*—(1) *Minimum length.* The minimum length for surfclams is 4.75 inches (12.065 cm).

(2) *Determination of compliance.* No more than 50 surfclams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surfclams in any inspected cage of surfclams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(3) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the **Federal Register**, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual

surfclams has been reduced because of density dependent factors.

(4) *Measurement.* Length is measured at the longest dimension of the surfclam shell.

■ 17. Section 648.76 is revised to read as follows:

**§ 648.76 Closed areas.**

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surfclam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Regional Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Regional Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Regional Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the "Boston Foul Ground" and located at 42°25'36" N. lat., 70°35'00" W. long., with a radius of 1 nm (1.61 km) in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the "New York Bight" and located at 40°25'04" N. lat., 73°42'38" W. long., and with a radius of 6 nm (9.66 km) in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31'00" N. lat., 73°43'38" W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19'48" N. lat., 73°45'42" W. long., to a point at the limit of the state territorial waters of New Jersey at 40°14'00" N. lat., 73°55'42" W. long.

(3) *106 Dumpsite.* The toxic industrial site known as the "106 Dumpsite" and located between 38°40'00" and 39°00'00" N. lat., and between 72°00'00" and 72°30'00" W. long.

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area, which is located on Georges Bank, and located east of 69° W. long., and south of 42°20' N. lat.

(b) *Areas closed because of small surfclams.* Areas may be closed because they contain small surfclams.

(1) *Closure.* The Regional Administrator may close an area to surfclams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surfclams of which:

(i) Sixty percent or more are smaller than 4.5 inches (11.43 cm); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening.* The Regional Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-length class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surfclams in the area.

(c) *Procedure.* (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Regional Administrator shall publish notification in the **Federal Register** of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening must be submitted to the Regional Administrator within 30 days after publication. The Regional Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the **Federal Register**. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the **Federal Register**. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surfclam and ocean quahog processor and to each surfclam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the **Federal Register**, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National

Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for PSP. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources.

(2) [Reserved]

■ 18. Section 648.77 is revised to read as follows:

**§ 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<sup>3</sup> (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).

■ 19. Section 648.78 is added to subpart E to read as follows:

**§ 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.

■ 20. Section 648.79 is added to subpart E to read as follows:

**§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.**

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Surfclam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels;

adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; suspension or adjustment of the surfclam minimum size limit; and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs). 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]

■ 21. Section 648.100 is revised to read as follows:

**§ 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.

■ 22. Section 648.101 is revised to read as follows:

**§ 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).

■ 23. Section 648.102 is revised to read as follows:

**§ 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 Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(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).  
 ■ 24. Section 648.103 is revised to read as follows:

**§ 648.103 Summer flounder accountability measures.**

(a) *Commercial sector EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the commercial sector ACL to be exceeded, or if the commercial fisheries in all

states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the sector ACL to be exceeded.

(b) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas, irrespective of whether the commercial sector ACL is exceeded. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing such restoration.

(c) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed

landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the **Federal Register** advising that, effective on a specific date, the summer flounder recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the RHL, the exact poundage of the landings overage will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(d) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year sector ACL.

(e) *State/Federal disconnect AM.* If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Summer Flounder Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.



■ 25. Section 648.104 is revised to read as follows:

**§ 648.104 Summer flounder minimum fish sizes.**

(a) *Moratorium (commercial) permitted vessels.* The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, *e.g.*, fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

■ 26. Section 648.105 is revised to read as follows:

**§ 648.105 Summer flounder recreational fishing season.**

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3), and fishermen subject to the possession limit, may fish for summer flounder from May 1 through September 30. This time period may be adjusted pursuant to the procedures in § 648.102.

■ 27. Section 648.106 is revised to read as follows:

**§ 648.106 Summer flounder possession restrictions.**

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party

boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) *Commercially permitted vessel possession limits.* Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in<sup>3</sup> (2.5 ft<sup>3</sup> or 70.79 cm<sup>3</sup>).

■ 28. Section 648.107 is revised to read as follows:

**§ 648.107 Conservation equivalent measures for the summer flounder party/charter and recreational fishery.**

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2011 are the conservation equivalent of the recreational fishing season, minimum fish size, and

possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the ASMFC.

(1) Federally permitted party and charter vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting summer flounder in or from the EEZ and subject to the recreational fishing measures of this part, landing summer flounder in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the ASMFC, shall be subject to the following precautionary default measures: Season—May 1 through September 30; minimum size—20.0 inches (50.80 cm); and possession limit—two fish.

■ 29. Section 648.108 is revised to read as follows:

**§ 648.108 Summer flounder gear restrictions.**

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for

mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a Summer Flounder Small-Mesh Exemption Area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0' W. long, until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.108(e), so that it is not "available for immediate use" outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined paragraph (c) of this section, if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in paragraph (a) of this section.

(d) *Mesh obstruction or constriction.*

(1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have "available for immediate use" any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not "available for immediate use."

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.102.

■ 30. Section 648.109 is added to subpart G to read as follows:

**§ 648.109 Sea turtle conservation.**

Sea turtle regulations are found at 50 CFR parts 222 and 223.

■ 31. Section 648.110 is added to subpart G to read as follows:

**§ 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 Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, 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]

■ 32. Section 648.120 is revised to read as follows:

**§ 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.

■ 33. Section 648.121 is revised to read as follows:

**§ 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).

■ 34. Section 648.122 is revised to read as follows:

**§ 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 Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(14) Modification of existing AM measures and ACT control rules utilized by the Scup Monitoring Committee.

(b) *Specification of fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified ACLs will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these

recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to ensure that the sector ACL will not be exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement annual measures.

(c) *Distribution of commercial quota.*

(1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January—April .....	45.11
Summer—May—October .....	38.95
Winter II—November—December ...	15.94

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(d) *Winter I and II commercial quota adjustment procedures.* The Regional Administrator will monitor the harvest of commercial quota for the Winter I period based on dealer reports, state data, and other available information and shall determine the total amount of scup landed during the Winter I period. In any year that the Regional Administrator determines that the landings of scup during Winter I are less than the Winter I quota for that year, he/she shall increase, through publication of a notification in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act, the Winter II quota for that year by the amount of the Winter I under-harvest. The Regional Administrator shall also adjust, through publication of a notification in the **Federal Register**, the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits established

through the annual specifications-setting process.

(e) *Research quota.* See § 648.21(g).

■ 35. Section 648.123 is revised to read as follows:

**§ 648.123 Scup accountability measures.**

(a) *Commercial sector period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the **Federal Register** advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment by quota period.* (i) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (a)(2)(iv) of this section, and irrespective of whether the commercial sector ACL is exceeded. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed in paragraphs (a)(2)(ii) through (iii) of this section:

(ii) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period

concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(iii) For the Winter II quota period, landings in excess of the allocation will be deducted from the Winter II period for the following year through notification in the **Federal Register** during July of the following year. The overage deduction will be based on landings information available for the Winter II period as of June 30 of the following year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(iv) During a fishing year in which the Winter I quota period is closed prior to April 15, a state may apply to the Regional Administrator for authorization to count scup landed for sale in that state from April 15 through April 30 by state-only permitted vessels fishing exclusively in waters under the jurisdiction of that state against the Summer period quota. Requests to the Regional Administrator to count scup landings in a state from April 15 through April 30 against the Summer period quota must be made by letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her designee, and must be received by the Regional Administrator no later than April 15. Within 10 working days following receipt of the letter, the Regional Administrator shall notify the appropriate state official of the disposition of the request.

(b) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the **Federal Register** advising that, effective on a specific date, the scup recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded RHL, the exact amount of the landings overage in pounds will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(c) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector ACL was exceeded will be deducted, as soon as practicable, from a subsequent single fishing year applicable sector ACL through the specification process.

(d) *State/Federal disconnect AM.* If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Scup Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.

■ 36. Section 648.124 is revised to read as follows:

**§ 648.124 Scup commercial season and commercial fishery area restrictions.**

(a) *Southern Gear Restricted Area—*  
 (1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this

section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**SOUTHERN GEAR RESTRICTED AREA**

Point	N. lat.	W. long.
SGA1 .....	39°20'	72°53'
SGA2 .....	39°20'	72°28'
SGA3 .....	38°00'	73°58'
SGA4 .....	37°00'	74°43'
SGA5 .....	36°30'	74°43'
SGA6 .....	36°30'	75°03'
SGA7 .....	37°00'	75°03'
SGA8 .....	38°00'	74°23'
SGA1 .....	39°20'	72°53'

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: *Loligo* 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'

NORTHERN GEAR RESTRICTED AREA  
1—Continued

Point	N. lat.	W. long.
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: *Loligo* squid; black sea bass; and silver hake (whiting).

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) [Reserved]

(e) *Addition or deletion of exemptions.* The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.130(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

(f) *Exempted experimental fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area; use fishing gear that does not conform to the regulations; possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section; or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of

the Magnuson-Stevens Act, and other applicable law and will not:

- (i) Have a detrimental effect on the scup resource and fishery;
- (ii) Cause the quotas for any species of fish for any quota period to be exceeded;
- (iii) Create significant enforcement problems; or
- (iv) Have a detrimental effect on the scup discard mitigation research project.

■ 37. Section 648.125 is revised to read as follows:

**§ 648.125 Scup gear restrictions.**

(a) *Trawl vessel gear restrictions—(1) Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. Scup on board these vessels must be stowed separately and kept readily available for inspection. Measurement of nets will conform with § 648.80(f).

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. “Top of the regulated portion of the net” means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the

purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction.*

(i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.124 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.124 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed in conformance with one of the methods specified in § 648.23(b), and that can be shown not to have been in recent use, is considered to be not available for immediate use.

(6) *Roller gear.* The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to § 648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes.* The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set forth in paragraph (a)(6) of this section, may be changed following the procedures in § 648.122.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of  $\frac{3}{16}$  inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(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.

■ 37. Section 648.126 is revised to read as follows:

**§ 648.126 Scup minimum fish sizes.**

(a) *Moratorium (commercially) permitted vessels.* The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 10.5 inches (26.67 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.122.

■ 38. Section 648.127 is revised to read as follows:

**§ 648.127 Scup recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit specified in § 648.128(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.122.

■ 39. Section 648.128 is added to subpart H to read as follows:

**§ 648.128 Scup possession restrictions.**

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3' N. lat., may not be landed with the skin removed.

■ 40. Section 648.129 is added to subpart H to read as follows:

**§ 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.

■ 41. Section 648.130 is added to subpart H to read as follows:

**§ 648.130 Scup framework adjustments to management measures.**

(a) *Within season management action.* See § 648.110(a).

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rules; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear restricted areas; gear requirements or prohibitions; permitting restrictions; recreational possession limits; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limits; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research.

(2) *MAFMC recommendation.* See § 648.110(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.110(a)(3)(i) through (iii).

(4) *Emergency actions.* See § 648.110(a)(4).



(b) [Reserved]

■ 42. Section 648.140 is revised to read as follows:

**§ 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.

■ 43. Section 648.141 is revised to read as follows:

**§ 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).

■ 44. Section 648.142 is revised to read as follows:

**§ 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 Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(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).

■ 45. Section 648.143 is revised to read as follows:

**§ 648.143 Black sea bass Accountability Measures.**

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black



sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters, will be counted against the quota by the state in which it is landed, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(b) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the **Federal Register** advising that, effective on a specific date, the black sea bass recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the recreational harvest limit, the exact amount of the landings overage (in pounds) will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(c) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landings-based AMs, then the exact amount of the overage in pounds by which the sector ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year applicable sector ACL.

(d) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Black Sea Bass Management Board and the MAFMC differ for a given

fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

■ 46. Section 648.144 is revised to read as follows:

**§ 648.144 Black sea bass gear restrictions.**

(a) *Trawl gear restrictions—(1) General.* (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh throughout.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net except that one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. “Top of the regulated portion of the net” means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction.*

(i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than

the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets.* Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have “available for immediate use” any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not “available for immediate use.”

(5) *Roller gear.* Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions—(1) Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel’s USCG documentation number or state registration number.

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a square vent with sides of 2 inches (5.1 cm), inside measure; however, black sea bass traps constructed of wooden laths instead may have escape vents constructed by leaving spaces of at least 1.375 inches (3.49 cm) between two sets of laths in the parlor portion of the trap. These dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel.* (i) Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string of  $\frac{3}{16}$  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.

■ 47. Section 648.145 is revised to read as follows:

**§ 648.145 Black sea bass possession limit.**

(a) No person shall possess more than 25 black sea bass in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

(b) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(c) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator of the vessel.

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4) may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or

more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) tote.

■ 48. Section 648.146 is revised to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from May 22 through October 11 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

■ 49. Section 648.147 is revised to read as follows:

**§ 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.

■ 50. Section 648.148 is added to subpart I to read as follows:

**§ 648.148 Special management zones.**

The recipient of a U.S. Army Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area

surrounding and including the site be designated by the MAFMC as a special management zone (SMZ). The MAFMC may prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification within the SMZ. The establishment of an SMZ will be effected by a regulatory amendment, pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report, considering the following criteria:

- (1) Fairness and equity;
- (2) Promotion of conservation;
- (3) Avoidance of excessive shares;
- (4) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;
- (5) The natural bottom in and surrounding potential SMZs; and
- (6) Impacts on historical uses.

(b) The MAFMC Chairman may schedule meetings of MAFMC's industry advisors and/or the SSC to review the report and associated documents and to advise the MAFMC. The MAFMC Chairman may also schedule public hearings.

(c) The MAFMC, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(d) The Regional Administrator will review the MAFMC's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the **Federal Register** in accordance with the recommendations. If the Regional Administrator rejects the MAFMC's recommendation, he or she shall advise the MAFMC in writing of the basis for the rejection.

(e) The proposed rule to establish a SMZ shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the record and consistent with the Magnuson-Stevens Act and other applicable law.

■ 51. Section 648.149 is added to subpart I to read as follows:

**§ 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]

■ 52. Section 648.160 is revised to read as follows:

**§ 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.

■ 53. Section 648.161 is revised to read as follows:

**§ 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).

■ 54. Section 648.162 is revised to read as follows:

**§ 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 Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports; 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).

■ 55. Section 648.163 is revised to read as follows:

**§ 648.163 Bluefish Accountability Measures (AMs).**

(a) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded.

(b) *Commercial sector EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if the Regional Administrator determines that the inaction of one or more states will cause the ACL specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the ACL to be exceeded.

(c) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

(1) *Commercial landings overage repayment.* All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year, irrespective of whether the fishery-level ACL is exceeded. If a state has increased or reduced quota through the transfer process described in § 648.162, then any

overage will be measured against that state's final adjusted quota.

(2) If there is a quota overage at the end of the fishing year among states involved in the combination of quotas, the overage will be deducted from the following year's quota for each of the states involved in the combined quota, irrespective of whether the fishery-level ACL is exceeded. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in § 648.162(d)(1).

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as possible, from a subsequent single fishing year recreational ACT.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors.

(f) *Non-landing AMs.* In the event that the ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the ACL was exceeded shall be deducted, as soon as possible, from a subsequent, single fishing year ACL.

(g) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or recreational harvest limit measures adopted by the ASMFC Bluefish Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations

of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur to Federal permit holders.

■ 56. Section 648.164 is revised to read as follows:

**§ 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.

■ 57. Section 648.165 is revised to read as follows:

**§ 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.

■ 58. Section 648.166 is added to subpart J to read as follows:

**§ 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.

■ 59. Section 648.167 is added to subpart J to read as follows:

**§ 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 Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, 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.

■ 60. Section 648.230 is revised to read as follows:

**§ 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.

■ 61. Section 648.231 is revised to read as follows:

**§ 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).

■ 62. Reserved § 648.232 is amended by revising the section heading and adding text to read as follows:

**§ 648.232 Spiny dogfish specifications.**

(a) *Commercial quota and other specification measures.* The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a TAL (*i.e.*, annual coastwide commercial quota) and any other measures, including those in paragraphs (a)(1) through (7) of this section, that are necessary to ensure that the commercial ACL will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The measures that may be recommended include, but are not limited to:

- (1) Minimum or maximum fish sizes;
- (2) Seasons;
- (3) Mesh size restrictions;
- (4) Trip limits;
- (5) Changes to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports;
- (6) Other gear restrictions; and
- (7) Changes to AMs and ACT control rules.

(b) *Joint Spiny Dogfish Committee recommendation.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a TAL, and possibly other measures, including those specified in paragraphs (a)(1) through (7) of this section, necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years.

(c) *Council recommendations.* (1) The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a TAL and other measures necessary to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other

impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota and other management measures to ensure that the ACL specified in § 648.230 will not be exceeded in any fishing year, for a period of 1–5 fishing years. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils.

(2) After such review, NMFS shall publish a proposed rule in the **Federal Register** specifying a TAL, adjustments to ACL, ACT, and TAL resulting from the accountability measures specified in § 648.233, and other measures necessary to ensure that the ACL will not be exceeded in any fishing year, for a period of 1–5 fishing years. After considering public comments, NMFS shall publish a final rule in the **Federal Register** to implement the TAL and other measures.

(d) [Reserved]

(e) *Distribution of annual quota.* (1) The TAL (*i.e.*, annual coastwide commercial quota) specified according to the process outlined section § 648.231 shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent); and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

■ 63. Reserved § 648.233 is amended by revising the section heading and adding text to read as follows:

**§ 648.233 Spiny dogfish Accountability Measures (AMs).**

(a) *Commercial EEZ closure.* The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.232(e)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing notification in the **Federal Register**. Upon the closure date, and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

(b) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (including

both landings and dead discards) to determine if the ACL has been exceeded.

(c) *Overage repayment.* In the event that the ACL has been exceeded in a given fishing year, the exact amount in pounds by which the ACL was exceeded shall be deducted, as soon as possible from a subsequent single fishing year ACL.

■ 64. Section 648.235 is revised to read as follows:

**§ 648.235 Spiny dogfish possession and landing restrictions.**

(a) *Quota Period 1.* From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart N, of this chapter.

**§ 648.237 [Removed and reserved]**

■ 65. Section 648.237 is removed and reserved.

**§ 648.238 [Added and reserved]**

■ 66. Section 648.238 is added to subpart L and reserved.

■ 67. Section 648.239 is added to subpart L to read as follows:

**§ 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 Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside program; 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.

■ 68. Section 648.290 is revised to read as follows:

**§ 648.290 Tilefish Annual Catch Limit (ACL).**

(a) The Tilefish Monitoring Committee shall recommend to the MAFMC an ACL for the commercial tilefish fishery, which shall be equal to the ABC recommended by the SSC.

(1) [Reserved]

(2) *Periodicity*. The tilefish commercial ACL may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Tilefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or in any 2 consecutive years), the Tilefish Monitoring Committee will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure ACLs are not as frequently exceeded.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that the tilefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 69. Section 648.291 is revised to read as follows:

**§ 648.291 Tilefish Annual Catch Target (ACT).**

(a) The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT as part of the tilefish specification process. The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors*. The ACT shall be less than or equal to the ACL. The Tilefish Monitoring Committee shall include the fishing mortality associated with the recreational fishery in its ACT recommendations only if this source of mortality has not already been accounted for in the ABC recommended by the SSC. The Tilefish Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity*. ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether

the SSC provides single or multiple-year ABC recommendations.

(b) *Performance review*. The Tilefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.290(b)(1) through (3).

■ 70. Section 648.292 is added to read as follows:

**§ 648.292 Tilefish specifications.**

The fishing year is the 12-month period beginning with November 1, annually.

(a) *Annual specification process*. The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, tilefish landings and discards information, and any other relevant available data to determine if the ACL, ACT, or total allowable landings (TAL) requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend ACL, ACT, and TAL to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate ACL, ACT, TAL, and other management measures for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the **Federal Register** specifying the annual ACL, ACT, TAL and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement the ACL, ACT, TAL and any management measures. The previous year's specifications will



remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

(b) *TAL*. (1) The TAL for each fishing year will be 1.995 million lb (905,172 kg) unless modified pursuant to paragraph (a) of this section.

(2) The sum of the TAL and estimated discards shall be less than or equal to the ACT.

(c) *TAL allocation*. For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research amount, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will be allocated to the individual IFQ permit holder as described in § 648.294(a).

(d) *Adjustments to the quota*. If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 500 lb (226.8 kg) may be reduced in the following fishing year. If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

(e) *Research quota*. See § 648.21(g).

■ 71. Section 648.293 is revised to read as follows:

**§ 648.293 Tilefish accountability measures.**

(a) If the ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by § 648.294(f).

(b) [Reserved]

■ 72. Section 648.294 is revised to read as follows:

**§ 648.294 Individual fishing quota (IFQ) program.**

(a) *IFQ allocation permits*. After adjustments for incidental catch, research set asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ allocation permit holders who held an IFQ permit as of September 1 of a given fishing year. Allocations shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions

for overages pursuant to paragraph (f) of this section. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. These allocations shall be issued in the form of an annual IFQ allocation permit.

(b) *Application*—(1) *General*. Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications*.

Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required.

(2) *Issuance*. Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold permanent allocation as of September 1 of the current fishing year. During the period between September 1 and October 31, transfer of IFQ is not permitted, as described in paragraph (e)(4) of this section. The IFQ allocation permit shall specify the allocation percentage of the IFQ TAL which the IFQ permit holder is authorized to harvest.

(3) *Duration*. An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the

allocation percentage under paragraph (e) of this section. All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS that includes the vessel permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land IFQ tilefish pursuant to the IFQ allocation permit to be effective.

(4) *Alteration*. An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(5) *Replacement*. The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(6) *Transfer*. The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(7) *Abandonment or voluntary relinquishment*. Any IFQ Allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c) [Reserved]

(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers*. Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all temporary IFQ

allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, an owner of an IFQ allocation may permanently transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). The Regional Administrator has final approval authority for all permanent IFQ allocation transfer requests.

(3) *IFQ allocation transfer restrictions.* (i) If IFQ allocation is temporarily transferred to any eligible entity, it may not be transferred by the transferee again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ will not be approved by the Regional Administrator if it would result in an entity owning, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) If the owner of an IFQ allocation leases additional quota from another IFQ allocation permit holder, any landings associated with this transferred quota will be deducted from the total yearly landings of the lessee, before his/her base allocation, if any exists, for the purpose of calculating the appropriate cost-recovery fee. As described in paragraph (h) of this section, a tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer.* Any IFQ allocation permit holder applying for either permanent or temporary transfer of IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for IFQ allocation transfers must be received by September 1 to be processed for the current fishing year.

(i) *Application information requirements.* An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; indicate eligibility to receive IFQ allocation; the amount of allocation to be transferred; and a declaration; by IFQ Allocation permit number, of all the IFQ allocations that the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land their IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned, pursuant to an enforcement proceeding under 15 CFR part 904; the transfer will result in the transferee having a tilefish IFQ allocation that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a); or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the

subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction.* No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent or temporary transfer of IFQ. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery.* A fee shall be determined as described in paragraph (h)(1) of this section, and collected to recover the government costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder. A tilefish IFQ allocation permit holder, with a permanent allocation, shall be responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with January 1, 2010. NMFS will create an annual IFQ allocation bill for each cost-recovery billing period and provide it to each IFQ allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program.* The Regional Administrator shall determine the costs

associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period to derive a percentage. IFQ allocation permit holders will be assessed a fee based on this percentage multiplied by the total ex-vessel value of all landings under their permanent IFQ allocation permit, including landings of allocation that is leased. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ allocation permit holder. If NMFS determines that the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program exceed 3 percent of the total value of tilefish landings, only 3 percent are recoverable.

(i) *Valuation of IFQ allocation.* The 3-percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed by an IFQ allocation holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(ii) [Reserved]

(2) *Fee payment procedure.* An IFQ allocation permit holder who has incurred a cost-recovery fee must pay the fee to NMFS within 45 days of the date of the bill. Cost-recovery payments shall be made electronically via the Federal Web portal, <http://www.pay.gov> or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost-recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost-recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not possible.

(3) *Payment compliance.* If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ allocation permit holder has not paid the full amount due, he/she shall notify the IFQ allocation permit holder in

writing of the deficiency. NMFS shall explain the deficiency and provide the IFQ allocation permit holder 30 days from the date of the notice, either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ allocation permit holder submits evidence in support of the appropriateness of his/her payment, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be in set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ allocation permit holder may be issued a letter of authorization to fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ allocation permit shall not be issued, and the letter of authorization shall not be valid until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued. If the Regional Administrator determines that the IFQ allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ allocation permit has already been issued, the Regional Administrator shall issue a FAD and will notify the IFQ allocation permit holder in writing. The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ allocation permit holder may renew the tilefish IFQ allocation permit. If NMFS does not receive full payment of a

recoverable cost fee prior to the end of the cost-recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

(4) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.*, future amendments or frameworks), but no less frequently than every 7 years.

■ 73. Section 648.295 is revised to read as follows:

**§ 648.295 Tilefish incidental trip limits.**

(a) *Incidental trip limit for vessels not fishing under an IFQ allocation.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (226.8 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ allocation permit, as specified at § 648.294(a). Any tilefish landed by a vessel fishing under an IFQ allocation permit, on a given fishing trip, count as landings under the IFQ allocation permit.

(b) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental tilefish TAL has been landed. The Regional Administrator shall publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the incidental tilefish fishery is closed for the remainder of the fishing year.

■ 74. Section 648.296 is revised to read as follows:

**§ 648.296 Tilefish recreational possession limit.**

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a charter/party vessel shall observe the recreational possession limit.

■ 75. Section 648.297 is added to subpart N to read as follows:

**§ 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	
	37.0	5.0	50.0	74.0	45.0	34.0	
Norfolk .....	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	

**§ 648.298 [Added and reserved]**

- 76. Section 648.298 is added to subpart N and reserved.
- 77. Section 648.299 is added to subpart N to read as follows:

**§ 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 to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, 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; and
  - (xx) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.
  - (xxi) Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require a formal amendment of the FMP instead of a framework adjustment.
- (2) *Adjustment process.* If the MAFMC determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments

prior to and at the second MAFMC meeting on that framework action.

(3) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC will make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

- (i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;
- (ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the MAFMC's recommended management measures;
- (iii) Whether there is an immediate need to protect the resource; and
- (iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the MAFMC's recommendation includes adjustments or additions to management measures and, after reviewing the

MAFMC's recommendation and supporting information:  
 (i) If the Regional Administrator concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraphs (a)(2) and (a)(3) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the MAFMC's recommendation and determines that

the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur with the MAFMC's recommendation, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

**§§ 648.1, 648.2, 648.4, 648.6, 648.7, 648.8, 648.12, 648.13, 648.14, 648.15, and 648.94 [Amended]**

■ 78. In the table below, for each section in the left column, remove the text from whenever it appears throughout the section and add the text indicated in the right column.

Section	Remove	Add	Frequency
§ 648.1(a)	surf clam	surfclam	1
§ 648.1(a)	Surf Clam	Surfclam	1
§ 648.2	surf clam	surfclam	6
§ 648.2	surf clams	surfclams	3
§ 648.2	Surf clams	Surfclams	1
§ 648.2	§ 648.70	§ 648.74	1
§ 648.2	§ 648.291(e)(1)	§ 648.294(e)(1)	2
§ 648.4(a)(3) introductory text	§ 648.105	§ 648.106	1
§ 648.4(a)(3)(i)(A)	§ 648.105	§ 648.106	1
§ 648.4(a)(3)(i)(L)(ii)	§ 648.105	§ 648.106	1
§ 648.4(a)(3)(i)(L)(iii)	§ 648.104(b)(1)	§ 648.108(b)(1)	1
§ 648.4(a)(4)	Surf clam	Surfclam	1
§ 648.4(a)(4)	surf clams	surfclams	2
§ 648.4(a)(4)	surf clam	surfclam	1
§ 648.4(a)(5)(ii)	§ 648.21	§ 648.22	1
§ 648.4(a)(6) introductory text	§ 648.125	§ 648.128	1
§ 648.4(a)(12) introductory text	§ 648.291	§ 648.294	1
§ 648.4(a)(12) introductory text	§ 648.293	§ 648.295	1
§ 648.4(a)(12)(i)	§ 648.295	§ 648.296	1
§ 648.6(a)(1)	surf clam	surfclam	2
§ 648.6(c)	surf clam	surfclam	1
§ 648.7(b)(1)(ii)	Surf clam	Surfclam	1
§ 648.7(b)(1)(ii)	surf clam	surfclam	2
§ 648.7(b)(1)(ii)	surf clams	surfclams	1
§ 648.7(b)(2)(ii)	§ 648.291(a)	§ 648.294(a)	1
§ 648.8(e)	surf clam	surfclam	2
§ 648.12 introductory text	surf clam	surfclam	1
§ 648.12(c)	surf clams	surfclams	1
§ 648.14(g)(1) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(g)(1)(iii)	§ 648.26	§ 648.27	1
§ 648.14(g)(2) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(g)(2)(i)	§ 648.21	§ 648.22	1
§ 648.14(g)(2)(ii)(C)	§ 648.25	§ 648.26	1
§ 648.14(g)(3) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(g)(3)(i)	§ 648.21(d)	§ 648.22(d)	1
§ 648.14(h) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(n)(1) introductory text	§ 648.21(g)	§ 648.22(g)	1
§ 648.14(n)(1)(i)	§ 648.105	§ 648.106	1
§ 648.14(n)(1)(i)	§ 648.102	§ 648.105	1
§ 648.14(n)(1)(ii)(B)	§ 648.105	§ 648.106	1
§ 648.14(n)(1)(iii)	§ 648.104	§ 648.108	1
§ 648.14(n)(1)(iii)	§ 648.105(a)	§ 648.106(a)	1
§ 648.14(n)(2) introductory text	§ 648.100(f)	§ 648.102(e)	1
§ 648.14(n)(2)(i)(A)	§ 648.104	§ 648.108	1
§ 648.14(n)(2)(i)(B)	§ 648.105(d)	§ 648.106(d)	1
§ 648.14(n)(2)(i)(B)	§ 648.104(a)	§ 648.108(a)	1
§ 648.14(n)(2)(i)(B)	§ 648.104(b)	§ 648.108(b)	1
§ 648.14(n)(2)(iii)(A)	§ 648.104	§ 648.108	1
§ 648.14(n)(2)(iii)(A)	§ 648.104(e)	§ 648.108(e)	1
§ 648.14(n)(2)(iii)(B)	§ 648.104	§ 648.108	1
§ 648.14(n)(2)(iii)(B)	§ 648.104(f)	§ 648.108(f)	1
§ 648.14(n)(2)(iii)(C)	§ 648.104(b)(1)	§ 648.108(b)(1)	1
§ 648.14(n)(2)(iii)(C)	§ 648.104	§ 648.108	1
§ 648.14(n)(3) introductory text	§ 648.100(f)	§ 648.102(e)	1
§ 648.14(n)(3)(ii)	§ 648.105	§ 648.106	1
§ 648.14(n)(3)(iii)	§ 648.102	§ 648.105	1
§ 648.14(o)(1) introductory text	§ 648.120(e)	§ 648.122(e)	1

Section	Remove	Add	Frequency
§ 648.14(o)(1)(ii)(A) .....	§ 648.122(g) .....	§§ 648.124 and 648.127 .....	1
§ 648.14(o)(1)(ii)(D) .....	§ 648.123 .....	§ 648.125 .....	2
§ 648.14(o)(1)(ii)(E) .....	§ 648.120(b)(3), (4), and (7) .....	§ 648.122(a) .....	1
§ 648.14(o)(1)(iii) .....	§ 648.124 .....	§ 648.126 .....	1
§ 648.14(o)(1)(v) .....	§ 648.123 .....	§ 648.125 .....	1
§ 648.14(o)(1)(vi) .....	§ 648.122 (a) or (b) .....	§ 648.124 (a) or (b) .....	1
§ 648.14(o)(1)(vi) .....	§ 648.123(b) .....	§ 648.125(a)(5) .....	1
§ 648.14(o)(2) introductory text .....	§ 648.120(e) .....	§ 648.122(e) .....	1
§ 648.14(o)(2)(i) introductory text .....	§ 648.123 .....	§ 648.125 .....	2
§ 648.14(o)(2)(i)(C) .....	§ 648.122 .....	§ 648.124 .....	1
§ 648.14(o)(3) introductory text .....	§ 648.120(e) .....	§ 648.122(e) .....	1
§ 648.14(o)(3)(ii) .....	§ 648.125 .....	§ 648.128 .....	1
§ 648.14(o)(3)(iii) .....	§ 648.122 .....	§ 648.124 .....	1
§ 648.14(o)(3)(v) .....	§ 648.124(b) .....	§ 648.126(b) .....	1
§ 648.14(p)(1) introductory text .....	§ 648.140(e) .....	§ 648.142(d) .....	1
§ 648.14(p)(1)(i) .....	§ 648.142 .....	§ 648.146 .....	1
§ 648.14(p)(1)(v) .....	§ 648.143 .....	§ 648.147 .....	1
§ 648.14(p)(2) introductory text .....	§ 648.140(e) .....	§ 648.142(d) .....	1
§ 648.14(p)(3) introductory text .....	§ 648.140 .....	§ 648.142 .....	1
§ 648.14(p)(2)(ii)(D)(3) .....	§ 648.140(e) .....	§ 648.142(d) .....	1
§ 648.14(p)(3)(iii) .....	§ 648.142 .....	§ 648.146 .....	1
§ 648.14(q) introductory text .....	§ 648.160(h) .....	§ 648.162(g) .....	1
§ 648.14(q)(2)(i) .....	§ 648.161(b) .....	§ 648.163(b) .....	1
§ 648.14(q)(2)(ii) .....	§ 648.161(a) .....	§ 648.163(a) .....	1
§ 648.14(u)(2)(ii) .....	§ 648.293 .....	§ 648.295 .....	1
§ 648.14(u)(2)(ii) .....	§ 648.291(a) .....	§ 648.294(a) .....	1
§ 648.14(u)(2)(iii) .....	§ 648.291(a) .....	§ 648.294(a) .....	1
§ 648.15(b)(1) .....	§ 648.70 .....	§ 648.74 .....	1
§ 648.15(b)(2) .....	§ 648.76 .....	§ 648.78 .....	1
§ 648.94(c)(3)(iv) .....	§ 648.104(a)(1) .....	§ 648.108(a)(1) .....	1

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