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AUTHORITY: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

SOURCE: 61 FR 35550, July 5, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 300 appear at 64 FR 44431, Aug. 16, 1999, and at 76 FR 59305, Sept. 26, 2011.

Subpart A—General

AUTHORITY: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

§ 300.1 Purpose and scope.

The purpose of this part is to implement the fishery conservation and management measures provided for in the international treaties, conventions, or agreements specified in each subpart, as well as certain provisions of the Lacey Act Amendments of 1981. The regulations in this part apply, except where otherwise specified in this part, to all persons and all places subject to the jurisdiction of the United States under the acts implemented under each subpart.

§ 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through K of this part, the terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee. Address: Room 14555, 1315 East-West Highway, Silver Spring, MD 20910.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

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

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of any statute administered by the Secretary.

CCAMLR inspector means a person designated by a member of the Commission for the Conservation of Antarctic Marine Living Resources as an inspector under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources to verify compliance with measures in effect under the Convention.

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Exclusive Economic Zone or *EEZ* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

Fishing or to fish means:

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

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

IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction, constitutes an importation within the meaning of the customs laws of the United States.

IRCS means International Radio Call Sign.

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

National of the United States or *U.S. national* means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

NMFS means the National Marine Fisheries Service, NOAA, Department of Commerce.

NMFS Headquarters means NMFS, 1315 East-West Highway, Silver Spring, MD 20910. *Attention:* Office of International Affairs.

Official number means the documentation number issued by the USCG

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or the certificate number issued by a state or the USCG for an undocumented vessel, or any equivalent number if the vessel is registered in a foreign nation.

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

Owner means, with respect to any vessel:

- (1) Any person who owns that vessel in whole or part (whether or not the vessel is leased or chartered);
- (2) Any charterer of the vessel, whether bareboat, time, or voyage;
- (3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or
- (4) Any agent designated as such by a person described in this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

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

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

Secretary means the Secretary of Commerce or a designee.

USCG means the United States Coast Guard.

Yellowfin tuna means any fish of the species *Thunnus albacares* (synonymy: *Neothunnus macropterus*).

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

§ 300.3 Relation to other laws.

Other laws that may apply to fishing activities addressed herein are set forth in § 600.705 of chapter VI of this title.

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§ 300.4 General prohibitions.

It is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate the conditions or restrictions of a permit issued under this part.

(b) Fail to submit information, fail to submit information in a timely manner, or submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to this part.

(c) Make any false statement, oral or written, to an authorized officer concerning the catching, taking, harvesting, possession, landing, purchase, sale, or transfer of fish, or concerning any other matter subject to investigation by that officer under this part.

(d) Conceal any material fact (including by omission), concerning any matter subject to investigation by an authorized officer under this part.

(e) Refuse to allow an authorized officer to inspect any report or record required to be made or kept under this part.

(f) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(g) Fail to comply immediately with any of the enforcement and boarding procedures specified in this part.

(h) Refuse to allow an authorized officer to board a fishing vessel, or enter any other area of custody (i.e., any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found) subject to such person's control, for the purpose of conducting any inspection, search, seizure, investigation, or arrest in connection with the enforcement of this part or any other applicable law.

(i) Destroy, stave, or dispose of in any manner, any fish, gear, cargo, or other matter, upon any communication or signal from an authorized officer of the United States, or upon the approach of such an officer, enforcement vessel, or aircraft, before the officer has had the opportunity to inspect

same, or in contravention of directions from such an officer.

(j) Intentionally destroy evidence that could be used to determine if a violation of this part has occurred.

(k) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer in the conduct of any boarding, inspection, search, seizure, investigation, or arrest in connection with enforcement of this part.

(l) Resist a lawful arrest or detention for any act prohibited by this part.

(m) Interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this part.

(n) Interfere with, obstruct, delay, or prevent, by any means, an investigation, search, seizure, or disposition of seized property in connection with enforcement of this part.

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish imported, exported or re-exported in violation of this part.

(p) Import, export, or re-export any fish regulated under this part without a valid International Fisheries Trade Permit as required under § 300.322 or applicable shipment documentation as required under § 300.323.

(q) Violate any provision of any statute implemented by this part.

(r) Attempt to do any of the foregoing.

[61 FR 35550, July 5, 1996, as amended at 81 FR 51133, Aug. 3, 2016]

§ 300.5 Facilitation of enforcement.

(a) *Compliance.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer or CCAMLR inspector to stop the vessel, and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing this part.

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(1) For the purposes of this section “freeboard” means the working distance between the top rail of the gunwale of a vessel and the water’s surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water’s surface.

(2) For the purposes of this section, “pilot ladder” means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

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

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

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal “L” which, in the International Code of Signals, means “you should stop your vessel instantly.”

(4) Failure of a vessel’s operator promptly to stop the vessel when directed to do so by an authorized officer or CCAMLR inspector, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer or CCAMLR inspector to board.

(5) A person aboard a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the sig-

nal to be a command to stop the vessel immediately.

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

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

(2) Stop immediately and lay to or, if appropriate and/or directed to do so by the authorized officer or CCAMLR inspector, maneuver in such a way as to allow the safe boarding of the vessel by the authorized officer or CCAMLR inspector and the boarding party.

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or CCAMLR inspector, a pilot ladder capable of being used for the purpose of enabling the authorized officer or CCAMLR inspector to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

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

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

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

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

(2) “RY-CY” (.- .- .- .-) means “you should proceed at slow speed, a boat is coming to you.” This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or,

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in some cases, without retrieval of fishing gear that may be in the water.

(3) “SQ3” (... --.- ...-) means “you should stop or heave to; I am going to board you.”

[61 FR 35550, July 5, 1996, as amended at 73 FR 67809, Nov. 17, 2008]

Subpart B [Reserved]

Subpart C—Eastern Pacific Tuna Fisheries

AUTHORITY: 16 U.S.C. 951 *et seq.*

§ 300.20 Purpose and scope.

(a) The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950, as amended (Act), and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement recommendations and other decisions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the IATTC Convention Area. The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, may promulgate such regulations as may be necessary to carry out the U.S. international obligations under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), and the Act, including recommendations and other decisions adopted by the IATTC.

(b) This subpart does not apply to:

(1) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes; or

(2) Any person or vessel engaged in sport fishing for personal use.

[87 FR 40735, July 8, 2022]

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), and the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, in the Act, or in the Antigua Convention, the definition in this section shall apply.

Activation of a satellite buoy means the act of initializing network service for receiving the satellite buoy's position. Activation is done by the buoy supplier company at the request of the vessel owner or manager. Following activation, the vessel owner pays for the communication service. The buoy can be transmitting or not, depending if it has been switched on.

Active FAD means a FAD deployed at sea where activation of the satellite buoy has occurred and the satellite buoy is transmitting its location and is being tracked by the vessel owner or operator. A FAD shall be considered an Active FAD unless/until the vessel owner or operator is no longer tracking its location and the vessel owner or operator notifies the IATTC that the FAD is deactivated.

Commercial with respect to commercial fishing, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Convention Area or IATTC Convention Area means all waters of the Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N latitude from the coast of North America to its intersection with 150° W longitude, then 150° W longitude to its intersection with 50° S latitude, and then 50° S latitude to its intersection with the coast of South America.

Data buoy means, for the purpose of § 300.25, a floating device, either drifting or anchored, which is deployed by one or more governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities, and which has been reported to the IATTC by a Member or Cooperating non-Member of the Commission.

Deactivation of a satellite buoy means the act of canceling network service for receiving the satellite buoy's position. Deactivation is done by the buoy supplier company at the request of the vessel owner or manager. Following deactivation, the communication service is no longer paid for and the buoy stops transmitting.

Dolphin set means a purse seine set where a class size 6 U.S. purse seine vessel (greater than 363 metric tons carrying capacity) deploys a net on, or encircles, dolphins to catch yellowfin tuna.

Fish aggregating device (FAD) means anchored, drifting, floating or submerged objects deployed and/or tracked by vessels, including through the use of radio and/or satellite buoys, for the purpose of aggregating target tuna species for purse-seine fishing operations.

Fishing trip means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

Floating object means any natural object or FAD around which fishing vessels may catch tuna.

Floating object set means a purse seine set in which purse seine gear is deployed to encircle a floating object.

Force majeure means, for the purpose of § 300.25, a situation in which a vessel at sea, except while transiting between ports on a trip during which no fishing operations occur, is disabled by mechanical and/or structural failure, fire or explosion.

Highly Migratory Species (HMS) Branch means the Chief of the HMS Branch of the Sustainable Fisheries Division, National Marine Fisheries Service West Coast Region, Suite 4200, 501 W Ocean Blvd., Long Beach, CA 90802, and *wcr.hms@noaa.gov*.

Incidental catch or *incidental species* means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

Land or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Mesh size means the distance between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

Mobulid ray means any animal in the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*).

Observer means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

Overall length means registered length, or the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments for a single-hull vessel; for a multi-hull vessel, it is the horizontal distance between the outboard side of the foremost part of the stem of the foremost hull and the outboard side of the aftermost part of the stern of the aftermost hull, excluding fittings or attachments (See 46 CFR 69.203).

Reactivation of a satellite buoy means the act of re-initializing network service for transmission of a satellite buoy's position after deactivation. The procedure is the same as the one to be

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followed for activation of a satellite buoy.

Regional Administrator means the Regional Administrator for the West Coast Region, National Marine Fisheries Service, or a designee.

Regional Vessel Register (hereafter referred to as *Vessel Register*) means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

Satellite buoy means a buoy that uses a satellite network service to indicate its geographical position and is compliant with requirements in §300.28(a) to be clearly marked with a unique identification code.

Shark line means a type of fishing gear used to target sharks and consisting of an individual hooked line or hooked lines attached to the floatline or directly to the floats of longline gear and deployed in the water column at depths shallower than the mainline.

Signal loss means the situation in which, without any intervention of the owner, operator, or manager, a satellite buoy cannot be located by the owner on a monitoring device. The main causes of signal loss are buoy retrieved by another vessel or person (at-sea or on-shore), FAD sinking, and buoy failure.

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for the Sustainable Fisheries Division, West Coast Region, National Marine Fisheries Service, or a designee.

Tender vessel means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

Transship means to unload fish from a vessel that caught fish to another vessel.

Transshipment receiving vessel means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

Trip limit means the total allowable amount of a species by weight of fish that may be retained on board, transshipped, or landed from a single fishing trip by a vessel that harvests tuna or tuna-like species.

Tropical tuna means any of the following species:

Common name	Scientific name
Bigeye tuna	<i>Thunnus obesus</i> .
Skipjack tuna	<i>Katsuwonus pelamis</i> .
Yellowfin tuna	<i>Thunnus albacares</i> .

Tuna means any fish of the genus *Thunnus* and the species *Katsuwonus pelamis*.

Vessel monitoring system (VMS) means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

VMS unit, sometimes known as a "mobile transmitting unit," means a transceiver or communications device, including all hardware and software that is carried and operated on a vessel as part of a VMS.

[61 FR 35550, July 5, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §300.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 300.22 Recordkeeping and reporting requirements.

(a) *Logbooks*—(1) *General logbook reporting*. The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel.

(2) *Longline and other non-purse seine logbooks*. Maintaining and submitting any logbook required by existing state or Federal regulation will be sufficient to comply with paragraph (a)(1) of this section.

(3) *Purse seine logbooks*. For purse seine vessels greater than 400 st (362.8

mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC will be sufficient to comply with this paragraph (a)(3) and with paragraph (a)(1) of this section, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less, maintaining and submitting any logbook required by existing state or Federal regulation will be sufficient to comply with paragraph (a)(1) of this section.

(b) *Whale shark encirclement reporting.* The owner and operator of a purse seine fishing vessel of the United States that encircles a whale shark (*Rhincodon typus*) while commercially fishing in the Convention Area must ensure that the incident is recorded on the log that is required by paragraphs (a)(1) and (3) of this section. The log must include the following information: The number of individual whale sharks with which the vessel interacted, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark upon release (including whether the animal was released alive, but subsequently died), as may be further specified by NMFS.

(c) *FAD reporting—(1) Reporting on FAD interactions.* U.S. purse seine vessel operators must provide the observer with the FAD identification code and, as appropriate, the other information in the FAD interaction standard format provided by the HMS Branch. U.S. vessel owners and operators, without an observer onboard, must ensure that any interaction or activity with a FAD is reported using a FAD interaction standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

(2) *Reporting on Active FADs.* U.S. vessel owners and operators must record or maintain daily information on buoy location and acoustic data for all Active FADs that have been deployed in the water in the IATTC Convention Area and report that information to the IATTC, using a format and address provided by the HMS Branch. Daily information on buoy location must include date, time, buoy identifier, latitude, longitude, IMO number, and speed. Daily acoustic data will vary depending on the buoy company, but must include company, buoy identifier, latitude, longitude, date, time, and available layers of data. Further instructions on reporting data specific for different buoys companies are available in a compliance guide. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(3) *Deactivation of Active FADs.* U.S. vessel owners and operators must report any deactivation of a satellite buoy, including the reason for deactivation, date, latitude, longitude, buoy identifier, and speed. This information must be reported to the IATTC, using a format and address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(4) *Reactivation of Active FADs.* U.S. vessel owners and operators must report any remote reactivation of a satellite buoy, including the reason for remote reactivation, date, latitude, longitude, buoy identifier, speed. This information must be reported to the IATTC, using a format and address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(d) *Cannery reporting.* U.S. vessel owners and operators must report processing plant data for fish caught in the IATTC Convention Area to the IATTC, and also make the data available to NMFS upon request, no later than 10 days after completion of unloading and the last day of grading by size. Instructions for reporting are available in a compliance guide.

[87 FR 40736, July 8, 2022]

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§ 300.23 IATTC Regional Vessel Register.

(a) *IATTC Regional Vessel Register (Vessel Register)*. The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (a)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (c)(2) of this section in order to fish for tuna and tuna-like species in the Convention Area.

(1) *Exception from requirement for inclusion on the Vessel Register*. Once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean may exercise an option to fish with purse seine gear to target tuna in the Convention Area without the vessel's capacity counted towards the cumulative carrying capacity described under paragraph (c)(1)(i) of this section. This exception is for a single fishing trip that does not exceed 90 days in duration. At any time during the calendar year, a vessel exercising this exception shall follow the procedures, where applicable, described in paragraph (c) of this section. No more than 32 of such trips are allowed each calendar year. After the commencement of the 32nd such trip, the Regional Administrator shall announce, in the FEDERAL REGISTER and by other appropriate means, that no more such trips are allowed for the remainder of the calendar year. Under 50 CFR 216.24(b)(6)(iii)(C), vessel assessment fees must be paid for vessels exercising this option.

(2) *Requirements for inclusion of purse seine vessels on the Vessel Register*. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(b) *Vessel information to be collected for the Vessel Register*—(1) *Required information*. Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; IMO number (if applicable); vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons and cubic meters; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this part and other parts of the CFR.

(2) *IMO numbers*. For the purpose of this section, an “IMO number” is the unique six or seven digit number issued for a vessel under the ship identification number scheme adopted by the International Maritime Organization (IMO) and managed by the entity identified by the IMO (currently IHS Maritime) and is also known as a Lloyd's Register number.

(3) *Requirements for IMO numbers*. The owner of a fishing vessel of the United States used for commercial fishing for tuna and tuna-like species in the IATTC Convention Area shall ensure that an IMO number has been issued for the vessel if the vessel's Certificate of Documentation issued under 46 CFR part 67 indicates that the vessel's total internal volume is 100 gross register tons or greater or 100 gross tonnage or greater. In addition, the owner of a fishing vessel of the United States engaging in fishing activities for tuna or tuna-like species in the IATTC Convention Area, and for which a high seas

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fishing permit under §300.333 is required, shall ensure that an IMO number has been issued for the vessel if the vessel's total internal volume is less than 100 gross registered tons or less than 100 gross tons, but equal to or greater than 12 meters in overall length, as indicated in the vessel's Certificate of Documentation issued under 46 CFR part 67 or State documentation. A vessel owner may request that an IMO number be issued for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit, <https://imonumbers.lrfairplay.com/>.

(4) *Request for exemption.* In the event that a fishing vessel owner, after following the instructions given by the designated manager of the IMO ship identification number scheme, is unable to ensure that an IMO number is issued for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Regional Administrator. The request must be sent by mail to NMFS HMS Branch, West Coast Region, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by email to wcr.hms@noaa.gov, and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(5) *Exemption process.* Upon receipt of a request for an exemption under paragraph (b)(4) of this section, the Regional Administrator will, to the extent they determine appropriate, assist the fishing vessel owner in requesting an IMO number. If the Regional Administrator determines that the fishing vessel owner has followed all appropriate procedures and yet is unable to obtain an IMO number for the fishing vessel, they will issue an exemption from the requirements of paragraph (b)(3) of this section for the vessel and its owner and notify the owner of the exemption. The Regional Administrator may limit the duration of the exemption. The Regional Administrator may rescind an exemption at any time. If an exemption is rescinded,

the fishing vessel owner must comply with the requirements of paragraph (b)(3) within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

(c) *Purse seine Vessel Register listing.* For a tuna purse seine vessel to be listed on the Vessel Register and to be categorized as either "active" or "inactive" in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under 50 CFR 216.24(b) and under paragraphs (c)(2) and (3) of this section as well as payment of the vessel assessment fee, where applicable, to the IATTC.

(1) *Restrictions for purse seine vessels.* The following restrictions apply:

(i) The cumulative carrying capacity of all tuna purse seine vessels on the Vessel Register may not exceed 31,866 cubic meters in a given year; and

(ii) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under 50 CFR 216.24(b)(2).

(2) *Active status for purse seine vessels.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and submit to the IATTC payment of the vessel assessment fee.

(i) To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, a

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vessel photograph, the vessel information as described under paragraph (b) of this section, and the owner or managing owner's signature, business email address, and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the IATTC.

(ii) The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and payment confirmation of the vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active.

(3) *Inactive status for purse seine vessels.* (i) From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(ii) To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the HMS Branch a written notification including, but not limited to, the vessel name and registration number and the

vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive.

(iii) At any time during the year, a vessel owner or managing owner may request that a tuna purse seine vessel qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as inactive for the remainder of the calendar year, provided the cumulative carrying capacity described in paragraph (c)(1)(i) of this section is not exceeded. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the HMS Branch written notification as described in paragraph (c)(3)(i) of this section. Payment of the vessel assessment fee is not required for such vessels.

(iv) The vessel owner or managing owner of a purse seine vessel listed as active on the Vessel Register that has sunk may request the vessel be listed as sunk and categorized as inactive on the Vessel Register. To request the vessel be listed as sunk and categorized as inactive on the Vessel Register, the vessel owner or managing owner must submit to the HMS Branch written notification within 30 days of the vessel's sinking. Written notification shall include, but is not limited to, the vessel name, date of sinking, registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. For subsequent calendar years, vessel assessment fee payment shall be made as described in paragraph (c)(3) of this section.

(v) A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020, requesting active status will be prioritized according to the hierarchy under paragraph (e) of this section. A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020, will be removed from the Vessel Register as described in paragraph (f)(9) of this section.

(d) *Frivolous requests for purse seine vessels on the Vessel Register.* (1) Except as described under paragraph (d)(2) of this section, requests for active status under paragraph (c)(2) of this section will be considered frivolous if, for a vessel categorized as active on the Vessel Register in a given calendar year:

(i) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(ii) The vessel did not fish for tuna at all in the Convention Area in that same year.

(2) Requests described under paragraph (d)(1) of this section will not be considered frivolous requests if:

(i) The vessel's catch pattern fell within the criteria described in paragraph (d)(1) of this section as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator; or

(ii) The vessel's carrying capacity is 400 st (362.8 mt) or less and there was at least one documented landing of tuna caught by the vessel in the Convention Area in the calendar year prior to the year in which the request is made and through November 15 of the year of the request, unless the vessel was not able to make a landing as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator.

(iii) The vessel was listed as inactive before January 21, 2020, and has not been listed as inactive for more than two consecutive calendar years since January 21, 2020.

(e) *Listing hierarchy for purse seine vessels on the Vessel Register.* Requests for active status and inactive status will be prioritized according to the following hierarchy:

(1) Requests received for replacement vessels with a carrying capacity equal to or less than a vessel removed from the Vessel Register under a request described in paragraph (j) of this section;

(2) Requests received for vessels that were categorized as active in the previous year, unless the request was determined to be frivolous by the Regional Administrator under paragraph (c)(2) of this section;

(3) Requests received for vessels that were categorized as inactive under paragraph (c)(3) of this section in the previous year, unless that vessel has been listed as inactive or sunk under paragraph (c)(3) for more than 2 consecutive calendar years after January 21, 2020;

(4) Requests for vessels not described in paragraphs (e)(1) through (3) of this section, and requests, if applicable, by replacement vessels for the portion of the carrying capacity greater than the amount authorized to the vessel that was replaced under paragraph (j) of this section, will be prioritized on a first-come, first-served basis according to the date and time of receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in 50 CFR 216.24(b)(6)(iii); and

(5) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (d) of this section or that have been listed as inactive or sunk as described in paragraph (c)(3) of this section for more than two consecutive calendar years after January 21, 2020.

(f) *Removal from the Vessel Register.* A vessel may be removed from the Vessel Register by the Regional Administrator under any of the following circumstances:

(1) The vessel has sunk and the vessel owner or managing owner has not submitted written notification as described in paragraph (c)(3)(iv) of this section.

(2) By written request of the vessel's owner or managing owner.

(3) Following a final agency action on a permit sanction for a violation.

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(4) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation.

(5) The U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

(i) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or

(ii) The documentation for the vessel has been or will be deleted for any reason.

(6) The vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation.

(7) For tuna purse seine vessels, by written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (i) of this section.

(8) For tuna purse seine vessels, the request for active status on the Vessel Register has been determined to be a frivolous request.

(9) For tuna purse seine vessels, the vessel has been listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020.

(g) *Process for removal from the Vessel Register.* When a vessel is removed from the Vessel Register under paragraph (f) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal and the reasons therefore. For a removal from the Vessel Register under §300.30(f)(3), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register under §300.30(f)(4), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

(h) *Procedures for replacing purse seine vessels removed from the Vessel Register.*

(1) A purse seine vessel that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the

cumulative carrying capacity described in paragraph (c)(1)(i) of this section is not exceeded. The owner or managing owner of a purse seine vessel of more than 400 st (362.8 mt) carrying capacity must pay the vessel assessment fee associated with inactive status. The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less must submit written notification as described in paragraph (c)(3) of this section.

(2) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel or vessels removed from active or inactive status under paragraph (f) of this section, provided the total carrying capacity described in paragraph (c)(1)(i) of this section is not exceeded and the owner submits a complete request under paragraph (h)(4) of this section.

(3) Notification of available capacity after a purse seine vessel has been removed from the Vessel Register will be conducted as follows:

(i) After a purse seine vessel categorized as active or inactive is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active or inactive list of the Vessel Register.

(ii) When a purse seine vessel categorized as active or inactive on the Vessel Register has been removed from the Vessel Register under the procedures described in paragraph (j) of this section, the Regional Administrator will not make available the capacity of the vessel removed from the Vessel Register, and will reserve that capacity for a replacement vessel for a period of 2 years from the date of notification described in paragraph (j)(4) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register at the same carrying capacity or less as that of the vessel it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to

the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity amount for the vessel being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available under the procedures described in paragraph (e)(4).

(4) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the HMS Branch written notification as described in paragraph (c)(2) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee to the IATTC within 10 business days after submission of the written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register at the same carrying capacity or less as that of the vessel or vessels it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its capacity to no more than the previously authorized carrying capacity for the vessel or vessels being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(5) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under 50 CFR 216.24(b) and payment of the vessel assessment fee to the IATTC and payment of the permit application fee to the Regional Administrator within 10 business days after submission of the vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register at the same carrying capacity as that of the vessel or vessels it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity for the vessel or vessels being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available. The replacement vessel will also only be eligible to be categorized as active on the Vessel Register if the captain of the replacement vessel possesses an operator permit under 50 CFR 216.24(b). Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(6) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(i) *Transfers of purse seine vessels to a foreign registry and flag.* The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the

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vessel to foreign registry and flag. Written notification must be submitted to the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph (i).

(j) *Aging fleet provision for purse seine vessels.* (1) The vessel owner or managing owner of a purse seine vessel listed as active or inactive on the Vessel Register may request to replace the current vessel with a new or used vessel without losing the vessel's placement in the hierarchy of requests for active status as described in paragraph (e) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register at the same carrying capacity or less as that of the vessel it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity be allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available at the time the request to be listed as active on the Vessel Register is received by the Regional Administrator, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity of the vessel being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available under the procedures described in paragraph (e)(4). This aging fleet provision may be used only once per vessel by the vessel owner or managing owner.

(2) A request made under this provision may include a request to remove the vessel from the Vessel Register. The Regional Administrator will ensure the amount of carrying capacity

equal to or less of the vessel being replaced will be available for the replacement vessel for up to 2 years from the date of notification described in paragraph (j)(4) of this section.

(3) To request a vessel be replaced under this provision, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, the vessel name and registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers, and the expected month and year the replacement vessel will be ready to fish in the Convention Area.

(4) Within 30 days of receiving each request described in paragraph (j)(3) of this section, the Regional Administrator shall notify the vessel owner or managing owner in writing whether the request has been accepted or denied, and the reasons therefore.

[87 FR 40736, July 8, 2022]

§ 300.24 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) [Reserved]

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4-6 using purse seine gear in the Convention Area as required under § 300.27(a).

(f) When using purse seine gear to fish for tuna in the Convention Area, fail to release any fish species (excluding mobulid rays, tuna, tuna-like species, and those being retained for consumption aboard the vessel) as soon as practicable after being identified on board the vessel during the brailing operation as required in § 300.27(b).

(g) [Reserved]

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(h) Fail to use the sea turtle handling, release, and resuscitation procedures in §300.27(c).

(i) Fail to report information when requested by the Regional Administrator under §300.22.

(j) Fail to provide written notification as described under §300.22(b)(8) to the Regional Administrator at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

(k) Use a U.S. fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna caught by longline gear in the Convention Area or to fish in contravention of §300.25(a)(4)(i) or (ii).

(l) Use a U.S. fishing vessel over 24 meters in overall length to fish with longline gear in the Pacific Ocean both inside and outside the Convention Area on the same fishing trip in contravention of §300.25(a)(4)(iii).

(m) Fail to stow gear as required in §300.25(a)(4)(iv) or (e)(6).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the IATTC Convention Area in contravention of §300.25(e).

(o) Use a U.S. longline or purse seine fishing vessel used to fish for HMS within one nautical mile of an anchored data buoy while the fishing vessel is in the Convention Area in contravention of §300.25(f)(1).

(p) Use a U.S. fishing vessel used for fishing for HMS, or any gear, equipment, or watercraft deployed by such a fishing vessel, to interact with a data buoy in the Convention Area in contravention of §300.25(f)(2).

(q) Remove from the water a data buoy and place it on board or tow a data buoy with a U.S. fishing vessel used for fishing for HMS while the vessel is in the Convention Area without authorization by the owner of the data buoy or the owner's authorized representative in contravention of §300.25(f)(3).

(r) In the event of an entanglement of a data buoy with a U.S. fishing vessel, or its fishing gear, equipment, or associated watercraft, used for fishing for HMS in the Convention Area, fail to

promptly remove the data buoy with as little damage to the data buoy and its mooring and anchor lines as possible, in contravention of §300.25(f)(4).

(s) Fail to take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys in contravention of §300.25(f)(5).

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain on board, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of §300.27(d).

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship, or land Pacific bluefin tuna in contravention of §300.25(g)(2) through (6).

(v) Fail to maintain, submit, or ensure submission of a log that includes all the information required in §300.22(a).

(w) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of §300.27(g).

(x) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in §300.27(h).

(y) Fail to install, activate, or operate a VMS unit as required in §300.26(c).

(z) In the event of VMS unit failure or interruption; fail to repair or replace a VMS unit; fail to notify the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division (or designee); and follow the instructions provided; or otherwise fail to act as provided in §300.26(c)(4).

(aa) Disable, destroy, damage or operate improperly a VMS unit installed under §300.26, or attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in §300.26(e).

(bb) Fail to make a VMS unit installed under §300.26 or the position data obtained from it available for inspection, as provided in §300.26 (f) and (g).

(cc) To retain on board, transship, store, land, sell, or offer for sale any

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part or whole carcass of a mobulid ray, as described in §300.27(i).

(dd) Fail to handle or release a mobulid ray as required in §300.27(j).

(ee) Fail to ensure characters of a unique code are marked indelibly on a FAD deployed or modified on or after January 1, 2017, in accordance with §300.28(a)(2).

(ff) Fail to provide information to an observer or record or report data on FADs as required in §300.22(c).

(gg) Use a commercial purse seine or longline fishing vessel of the United States to retain on board, transship, store, or land any part or whole carcass of a silky shark (*Carcharhinus falciformis*) in contravention of §300.27(e).

(hh) Fail to follow observer safety requirements as specified under §300.29.

(ii) Fail to handle or release a shark as required in §300.27(k).

(jj) Use a shark line in contravention of §300.27(l).

(kk) When deploying a FAD, activate the satellite buoy attached to a FAD in a location other than on a purse seine vessel at sea as required in §300.28(b).

(ll) Fail to activate a satellite buoy before deploying a FAD at sea as required in §300.28(b).

(mm) Deploy a FAD in the IATTC Convention Area that is not an Active FAD.

(nn) Have more Active FADs than specified in §300.28(c) in the IATTC Convention Area at any one time.

(oo) Deploy a FAD in the IATTC Convention Area during a period of 15 days prior to the start of the selected closure period in contravention of §300.28(d)(1).

(pp) Fail to timely remove from the water a number of FADs in the IATTC Convention Area equal to the number of FADs set upon by the vessel during the 15 days prior to the start of the selected closure period as required in §300.28(d)(2).

(qq) Deploy, or have onboard a vessel, a FAD in the IATTC Convention Area that fails to comply with the FAD design requirements in §300.28(e).

[61 FR 35550, July 5, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §300.24, see the List of CFR Sections Affected, which appears in the

Finding Aids section of the printed volume and at www.govinfo.gov.

§ 300.25 Fisheries management.

(a) *Longline tuna catch limits.* (1) Fishing seasons for all tuna species begin on 0000 hours Coordinated Universal Time (UTC) January 1 and end either on 2400 hours UTC December 31 or when NMFS closes the fishery for a specific species.

(2) There is a limit of 750 metric tons of bigeye tuna that may be caught by longline gear in the Convention Area by U.S. commercial fishing vessels that are over 24 meters in overall length. The catch limit within a calendar year is subject to increase if the United States receives a transfer of catch limit from another IATTC member or cooperating non-member, per paragraph (a)(5) of this section.

(3) NMFS will project a date the limit of bigeye tuna established under paragraph (a)(2) of this section will be reached (*i.e.*, a closure date) by monitoring longline landings, data submitted in logbooks, and other available information. NMFS will publish a notice in the FEDERAL REGISTER at least 7 calendar days in advance of that projected closure date announcing that the limit has been reached. The FEDERAL REGISTER notice will specify that the restrictions described in paragraph (a)(4) of this section will be in effect through the end of the calendar year.

(4) Once the closure date is announced, pursuant to paragraph (a)(3) of this section the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in overall length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a U.S. fishing vessel upon the effective closure date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that the bigeye tuna is landed within 14 days after the effective closure date.

(B) The 14-day limit is waived in the case of a U.S. fishing vessel that has already declared to NMFS, pursuant to

§ 665.803(a) of this title, that the current trip type is shallow-setting. However, the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective closure date, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by a vessel of the United States over 24 meters in overall length and using longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iii) A fishing vessel of the United States over 24 meters in overall length may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip. The only exceptions are: a fishing trip during which the closure date was announced under paragraph (a)(3) of this section, and a trip for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip is shallow-setting.

(iv) If a fishing vessel of the United States over 24 meters in overall length is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during an effective closure period on the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing. Specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use. This provision does not apply to trips in which vessels have made a declaration to NMFS, pursuant to § 665.803(a) of this title, that the trip type is shallow-setting.

(5) If the United States engages in a transfer of a bigeye tuna catch limit with another IATTC member or cooperating non-member, NMFS will publish a notice in the FEDERAL REGISTER announcing the new catch limit that is available to U.S. commercial fishing vessels that are over 24 meters in over-

all length. All restrictions described in paragraphs (a)(1) and (3) through (4) of this section will continue to apply.

(b) *Use of tender vessels.* No person subject to these regulations may use a tender vessel in the Convention Area.

(c) *Transshipments at sea.* No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

(d) *Observer requirements*—(1) *Purse seine vessels.* (i) The holder of an eastern tropical Pacific Ocean vessel permit, as required by § 216.24(b) of this title, must allow an observer duly authorized by the Administrator, West Coast Region, to accompany the vessel on all fishing trips in the IATTC Convention Area for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions, pursuant to the requirements in § 216.24(e) of this title. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations unless an exemption has been granted from these requirements as provided for in § 216.24(e)(1)(i) of this title.

(ii) [Reserved]

(2) [Reserved]

(e) *Purse seine closures*—(1) *72-day closure.* A U.S. commercial purse seine fishing vessel that is of class size 4-6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days during one of the following two periods:

(i) From 0000 hours Coordinated Universal Time (UTC) July 29 to 2400 hours UTC October 8; or

(ii) From 0000 hours UTC November 9 to 2400 hours UTC January 19 of the following year.

(2) *Additional closure days for vessels that exceed bigeye tuna catch levels.* (i) In 2023 and 2024, U.S. purse seine vessels that exceed a certain annual catch level of bigeye tuna must increase the number of closure days they observe in the following year, as specified in table 1 to this paragraph (e)(2).

(ii) The additional days of closure must be added to one of the two closure

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periods indicated in paragraph (e)(1) of this section. For vessels observing the first closure period, the additional days must be added at the beginning of the closure period. For vessels observing the second closure period, the additional days must be added to the end of the closure period. The HMS Branch will confirm the determination of annual catch levels for U.S. purse vessels based on information provided by the IATTC and notify any U.S. vessel that exceeds a given catch level.

TABLE 1 TO PARAGRAPH (e)(2)

Catch level (mt) exceeded	Additional closure days observed
1,200	10
1,500	13
1,800	16
2,100	19
2,400	22

(3) *Choice of closure period.* A vessel owner, manager, or association representative of a vessel that is subject to the requirements of paragraph (e)(1) of this section must provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (e)(1) their vessel will observe in that year. This written notification must be submitted by email to wcr.hms@noaa.gov and must be received no later than May 15 of the relevant calendar year. The written notification must include the vessel name and registration number, the closure dates that will be observed by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) *Default closure period.* If written notification is not submitted per paragraph (e)(3) of this section for a vessel subject to the requirements under paragraph (e)(1) of this section, that vessel must observe the second closure period under paragraph (e)(1)(ii) of this section.

(5) *Request for exemption due to force majeure.* A vessel may request a reduced closure period if a *force majeure* event renders the vessel unable to proceed to sea outside one of the two closure periods specified in paragraph (e)(1) of this section for at least 75 continuous days. A vessel will only be eli-

gible for an exemption due to *force majeure* if the vessel was disabled in the course of fishing operations by mechanical and/or structural failure, fire, or explosion.

(i) A request for an exemption due to *force majeure* must be made to the Highly Migratory Species Branch no later than 20 calendar days after the end of the period of inactivity due to *force majeure*. The request must be made via email to wcr.hms@noaa.gov or by contacting the HMS Branch. The request must include the name and official number of the vessel, vessel owner or manager's name and signature, and evidence to support the request, which may include but is not limited to photographs, repair bills, certificates of departure from port, and in the case of a marine casualty, a completed copy of the U.S. Coast Guard Form CG-2692A (See 46 CFR 4.05-10).

(ii) If accepted by the Sustainable Fisheries Division, the request for exemption due to *force majeure* will be forwarded to the IATTC Director. If declined by the Sustainable Fisheries Division, the applicant may provide additional information or documentation to the Sustainable Fisheries Division with a request that the initial decision be reconsidered by email to wcr.hms@noaa.gov, or by contacting the HMS Branch Chief.

(iii) If the request for an exemption due to *force majeure* is accepted by the IATTC, the vessel may observe a reduced closure period of 40 consecutive days in the same year during which the *force majeure* event occurred, in one of the two closure periods described in paragraph (e)(1) of this section. After a request is accepted by the IATTC, the vessel owner or manager must specify to the HMS Branch which 40 consecutive days the vessel will observe for their reduced closure period.

(iv) If the request for an exemption due to *force majeure* is accepted by the IATTC and the vessel has already observed a closure period described in paragraph (e)(1) of this section in the same year during which the *force majeure* event occurred, the vessel may observe a reduced closure period of 40 consecutive days the following year, in one of the two closure periods described in paragraph (e)(1).

(v) An exemption due to *force majeure* will only apply to the 72-day closure period required under paragraph (e)(1) of this section. Vessels that are both granted a reduced 40-day initial closure period due to *force majeure* under this paragraph (e)(5) and required to observe additional closure days for exceeding bigeye tuna catch levels under paragraph (e)(2) of this section must observe the reduced closure period consecutively with the additional closure days by adding the additional closure days to either the beginning of the first reduced closure period or the end of the second reduced closure period.

(vi) Any purse seine vessel for which a *force majeure* request is accepted by the IATTC must carry an observer aboard authorized pursuant to the International Agreement on the International Dolphin Conservation Program, unless that vessel has been granted an exemption from the Regional Administrator.

(6) *31-day area closure.* A U.S. fishing vessel of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9 to 2400 hours on November 8 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W longitude and bounded at the north and south by 4° N and 3° S latitude.

(7) *Requirement to stow gear.* At all times while a vessel is in a time/area closed period established under paragraph (e)(1) or (6) of this section, unless fishing under the exception under paragraph (e)(5) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

(f) *Restrictions on fishing in proximity to data buoys.* (1) A longline or purse seine fishing vessel of the United States may not be used to fish for HMS within one nautical mile of an anchored data buoy in the Convention Area. The one-nautical-mile distance shall be measured from the data buoy to the nearest portion of the fishing vessel or items associated with the

fishing vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. This prohibition shall not apply if and when the fishing vessel is operated as part of a scientific research program that has received specific authorization by the IATTC or is conducting work on behalf of the IATTC.

(2) A fishing vessel of the United States used to fish for HMS, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, may not be used to interact with a data buoy while the fishing vessel is in the Convention Area. Interact with a data buoy means to engage in conduct that could impair the functioning of a data buoy through actions that include but that are not limited to the following: encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the fishing vessel, including equipment such as watercraft, to a data buoy or its mooring; or cutting a data buoy anchor line.

(3) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS may not remove a data buoy or any parts thereof from the water and place it on board the fishing vessel or tow a data buoy when in the Convention Area unless authorized to do so by the owner of the data buoy or an authorized representative or agent of the owner. When practicable, advance written authorization must be available onboard a U.S. fishing vessel that has taken on board or tows a data buoy. In all other cases, a written document (*e.g.*, fax, email) verifying the authorization must be obtained by the vessel owner or operator within 15 days of landing.

(4) In the event that a fishing vessel of the United States that is used to fish for HMS or any of its fishing gear, equipment, or associated watercraft, becomes entangled with a data buoy while the fishing vessel is in the Convention Area, the owner and operator of the fishing vessel must promptly remove the entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage to the data buoy and its mooring and anchor lines as possible.

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(5) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS must take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys.

(g) *Pacific bluefin tuna (Thunnus orientalis) commercial catch limits in the eastern Pacific Ocean for 2022–2024*—(1) *Biennial catch limit for 2021–2022*. The biennial catch limit for 2021–2022 is 739 metric tons.

(2) *Biennial catch limit for 2023–2024*. The biennial catch limit for 2023–2024 is either:

(i) 1,017 metric tons increased by the amount, not to exceed 37 metric tons, of Pacific bluefin tuna catch remaining from the 2021–2022 U.S. commercial catch limit; or,

(ii) 1,017 metric tons reduced by the amount of Pacific bluefin tuna caught in excess of the 2021–2022 U.S. commercial biennial catch limit.

(3) *Annual catch and trip limits for 2022*. For the calendar year 2022, all commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 523 metric tons. A 20-metric ton trip limit will be in effect until any of the following criteria are met:

If the time of year is . . .	And NMFS anticipates cumulative catch will be . . . (mt)	Then the trip limit will be . . . (mt)
(i) January through June	200 300	15 3
(ii) July through September	250 325	15 3
(iii) October through December	300 423	15 3

(4) *Annual catch and trip limits for 2023*. For the calendar year 2023, all commercial fishing vessels of the United States combined may capture,

retain, transship, or land no more than 720 metric tons. A 30-metric ton trip limit will be in effect until any of the following criteria are met:

If the time of year is . . .	And NMFS anticipates cumulative catch will be . . . (mt)	Then the trip limit will be . . . (mt)
(i) January through June	400 500	20 3
(ii) July through September	430 520	20 3
(iii) October through December	470 620	20 3

(5) *Annual catch and trip limits for 2024*. (i) If the 2024 catch limit is between 525 and 720 metric tons, a 30-met-

ric ton trip limit will be in effect until any of the following criteria are met:

If the time of year is . . .	And NMFS anticipates the cumulative catch is within . . . (mt of the annual catch limit)	Then the trip limit will be . . . (mt)
(A) January through June	320 220 150	20 10 3
(B) July through September	300 200 140	20 10 3
(C) October through December	250 100	20 3

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(ii) If the 2024 catch limit is between 400 and 524 metric tons, a 20-metric ton trip limit will be in effect until any of the following criteria are met:

If the time of year is . . .	And NMFS anticipates cumulative catch is within . . . (mt of the annual catch limit)	Then the trip limit will be . . . (mt)
(A) January through June	300	15
	200	3
(B) July through September	250	15
	150	3
(C) October through December	200	15
	100	3

(iii) If the 2024 catch limit is between 297 and 399 metric tons, a 15-metric ton trip limit will be in effect until any of the following criteria are met:

If the time of year is . . .	And NMFS anticipates cumulative catch is within . . . (mt of the annual catch limit)	Then the trip limit will be . . . (mt)
(A) January through June	220	3
(B) July through September	200	3
(C) October through December	100	3

(iv) If the 2024 catch limit is 296 metric tons or less, the trip limit will be 5 metric tons for the entire calendar year.

(6) *In-season actions for trip limits and closure of the fishery.* If NMFS determines that action to change a trip limit needs to be taken under paragraphs (g)(3) through (5) of this section, the revised trip limit will be effective upon the date provided in a notification of in-season action in accordance with paragraph (g)(7) of this section. Upon the effective date of an in-season action to change trip limits under paragraphs (g)(3) through (5), targeting, retaining on board, transshipping, or landing Pacific bluefin tuna in the Convention Area in violation of the in-season action shall be prohibited, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notification of in-season action may be retained on board and landed or transshipped within 24 hours after the effective date of the notice, to the extent authorized by applicable laws and regulations. After NMFS determines that the annual catch limits under paragraphs (g)(3) through (5) are expected to be reached, NMFS will close the fishery effective upon the date provided in the notification in accordance

with paragraph (g)(7). Upon the effective date in the notification, targeting, retaining on board, transshipping, or landing Pacific bluefin tuna in the Convention Area shall be prohibited through the end of the calendar year, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notice may be retained on board and landed or transshipped within 14 days after the effective date published in the fishing closure notification, to the extent authorized by applicable laws and regulations.

(7) *Announcement and effective dates of in-season actions.* If in-season actions under paragraphs (g)(2) through (6) of this section are needed, NMFS will post a notice on the NMFS web page announcing the in-season action, including effective dates. NMFS will also send emails with notice of the in-season action to affected vessel owners. This action will also be published in the FEDERAL REGISTER as soon as practicable. The in-season action will be effective upon the earlier of either receipt by email of such notice or publication in the FEDERAL REGISTER.

(8) *Reversal of in-season actions.* If an in-season action taken under paragraphs (g)(2) through (6) of this section is based on overestimate of actual

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catch, NMFS will reverse that action in the timeliest possible manner, provided NMFS finds that reversing that action is consistent with the management objectives for the affected species. The fishery will be subject to the change in trip limit or reopened effective on the date provided in the notice in accordance with paragraph (g)(7) of this section.

(9) *State of California fish landing receipts.* If landing Pacific bluefin tuna into the State of California, fish landing receipts must be submitted within 24 hours to the California Department of Fish and Wildlife in accordance with the requirements of applicable State regulations.

[64 FR 44431, Aug. 16, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 300.25, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 300.26 Vessel monitoring system (VMS).

(a) *Assistant Director (AD), NOAA Office of Law Enforcement, Pacific Islands Division (or designee) and VMS Helpdesk contact information and business hours.*

(1) The contact information for the AD for the purpose of this section: 1845 Wasp Blvd., Building 176, Honolulu, HI 96818; telephone: (808) 725-6100; facsimile: 808-725-6199; email: pidvms@noaa.gov; business hours: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time.

(2) The contact information for the NOAA Office of Law Enforcement's VMS Helpdesk is telephone: (888) 219-9228, ext. 2; email: ole.helpdesk@noaa.gov. The business hours of the VMS Helpdesk are Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(b) *Applicability.* This section applies to any U.S. commercial fishing vessel that is 24 meters or more in overall length and engaging in fishing activities for tuna or tuna-like species in the Convention Area, and for which either of the following permits is required: Pacific highly migratory species permit under § 660.707, or high seas fishing permit under § 300.13 of this part.

(c) *Provisions for Installation, Activation and Operation*—(1) *VMS Unit Installation.* The vessel owner or operator must obtain and have installed on the fishing vessel, in accordance with instructions provided by the AD and the VMS unit manufacturer, a VMS unit that is type-approved by NOAA for fisheries in the IATTC Convention Area. The vessel owner or operator shall arrange for a NOAA-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NOAA at a default reporting interval of at least once per hour. NOAA, the USCG, and other authorized entities are authorized to receive and relay transmissions from the VMS unit. The NOAA OLE VMS Helpdesk is available to provide instructions for VMS installation and a list of the current type-approved VMS units and mobile communication service providers.

(2) *VMS Unit Activation.* If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous activation, or if directed by the AD, the vessel owner or operator must, prior to leaving port:

(i) Turn on the VMS unit to make it operational;

(ii) Submit a written activation report to the AD, via mail, facsimile or email, that includes the vessel's name; the vessel's official number; the VMS unit manufacturer and identification number; and telephone, facsimile or email contact information for the vessel owner or operator; and

(iii) Receive verbal or written confirmation from the AD that the proper VMS unit transmissions are being received from the VMS unit.

(3) *VMS Unit Operation.* The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is in port or otherwise not at sea, or if, after the end of the fishing season, the vessel will no longer be engaging in fishing activities in the Convention Area for which either a Pacific highly migratory species permit or a high seas fishing permit is

required, provided that the owner or operator:

(i) Prior to shutting down the VMS unit, reports to the AD or the NOAA Office of Law Enforcement's VMS Helpdesk via facsimile, email, or web-form the following information: The intent to shut down the VMS unit; the vessel's name; the vessel's official number; an estimate for when the vessel's VMS may be turned back on; and telephone, facsimile or email contact information for the vessel owner or operator. In addition, the vessel owner or operator shall receive verbal or written confirmation from the AD before shutting down the VMS unit after the end of the fishing season; and

(ii) When turning the VMS unit back on, report to the AD or the NOAA Office of Law Enforcement's VMS Helpdesk, via mail, facsimile or email, the following information: That the VMS unit has been turned on; the vessel's name; the vessel's official number; and telephone, facsimile or email contact information for the vessel owner or operator; and

(iii) Prior to leaving port, receive verbal or written confirmation from the AD that proper transmissions are being received from the VMS unit.

(4) *Failure of VMS unit.* If the VMS unit has become inoperable or transmission of automatic position reports from the VMS unit has been interrupted, or if notified by NOAA or the USCG that automatic position reports are not being received from the VMS unit or that an inspection of the VMS unit has revealed a problem with the performance of the VMS unit, the vessel owner or operator shall comply with the following requirements:

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the AD by telephone, facsimile, or email at the earliest opportunity during the AD's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the AD which could include, but are not limited to, ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic po-

sition reports at specified intervals by other means; and repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) *Related VMS Requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of this paragraph (c), provided that the VMS unit is operated continuously and at all times while the vessel is at sea, unless the AD authorizes a VMS unit to be shut down as described in paragraph (c)(3) of this section, the VMS unit and mobile communications service providers are type-approved by NOAA for fisheries in IATTC Convention Area, and the specific requirements of paragraph (c)(4) of this section are followed. If the VMS unit is owned by NOAA, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NOAA, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

(d) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NOAA as required in paragraph (c) of this section. However, if NOAA is paying for the VMS-associated costs because the VMS unit is carried and operated under a requirement of part 300 of this title, part 660 of this title, or part 665 of this title, the vessel owner and operator shall not be responsible for costs that those regulations specify are the responsibility of NOAA. In addition, NOAA is responsible for the cost of any temporary increase in the default reporting interval to support active enforcement investigations of specific vessels.

(e) *Tampering.* The vessel owner and operator must ensure that the VMS

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unit is not tampered with, disabled, destroyed, damaged or maintained improperly, and that its operation is not impeded or interfered with.

(f) *Inspection.* The vessel owner and operator must make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers.

(g) *Access to data.* The vessel owner and operator must make the vessel's position data obtained from the VMS unit or other means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers.

[80 FR 60538, Oct. 7, 2015]

§ 300.27 Incidental catch and tuna retention requirements.

(a) *Tuna retention requirements for purse seine vessels.* Bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

(b) *Release requirements for fish species on purse seine vessels.* All purse seine vessels must release, as soon as practicable after being identified on board the vessel during the brailing operation, all billfish, rays (not including mobulid rays, which are subject to paragraph (i) of this section), dorado (*Coryphaena hippurus*), and other fish species. This requirement does not apply to tuna or tuna-like species, or to other fish retained for consumption aboard the vessel. Sharks caught in the IATTC Convention Area and that are not retained for consumption aboard the vessel must be released according to the requirements in paragraph (k) of this section. Tuna caught in the IATTC Convention Area are subject to the retention requirements in paragraph (a) of this section.

(c) *Sea turtle handling and release.* All purse seine vessels must apply special sea turtle handling and release requirements, as follows:

(1) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the sea turtle;

(2) If a sea turtle is entangled in the net, net roll shall stop as soon as the sea turtle comes out of the water and shall not resume until the sea turtle has been disentangled and released;

(3) If, in spite of the measures taken under paragraphs (c)(1) and (c)(2) of this section, a sea turtle is accidentally brought on board the vessel alive and active, the vessel's engine shall be disengaged and the sea turtle shall be released as quickly as practicable;

(4) If a sea turtle brought on board under paragraph (c)(3) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

(d) *Oceanic whitetip shark restrictions.* The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining on board, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(e) *Silky shark restrictions for purse seine and longline vessels.* The crew, operator, and owner of a commercial purse seine or longline fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the IATTC Convention Area, except as provided in paragraph (f) of this section.

(f) *Exception for silky shark caught and frozen on purse seine vessels.* In the case of a purse seine vessel operating in the IATTC Convention Area that catches a silky shark that is not seen during fishing operations and is delivered into the vessel hold, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to the responsible government authority present at the point of landing. In U.S.

ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port, or other authorized personnel. If no governmental authorities are available, the whole silky shark surrendered must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner or operator shall report these incidences to the IATTC Secretariat by recording them in the IATTC Regional Purse Seine Logbook, or another form identified by NMFS.

(g) *Whale shark restrictions for purse seine vessels.* Owners, operators, and crew of fishing vessels of the United States commercially fishing for tuna in the Convention Area may not set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) if the animal is sighted prior to the commencement of the set or the attempted set.

(h) *Whale shark release.* The crew, operator, and owner of a fishing vessel of the United States commercially fishing for tuna in the Convention Area must release as soon as possible, any whale shark that is encircled in a purse seine net, and must ensure that all reasonable steps are taken to ensure its safe release. No whale shark may be towed out of a purse seine net (*e.g.*, using towing ropes).

(i) *Mobulid ray restrictions.* The crew, operator, and owner of a U.S. commercial fishing vessel is prohibited from retaining on board, transshipping, storing, landing, selling, or offering for sale any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area, except as provided in the following sentence. In the case of any mobulid ray caught in the IATTC Convention Area on an observed purse seine vessel that is not seen during fishing operations and is delivered into the vessel hold, the mobulid ray may be stored on board and landed, but the vessel owner or operator must show the whole mobulid ray to the on-board observer at the point of landing for recording purposes, and then dispose of the mobulid ray at the direction of the responsible government authority. In U.S. ports the responsible governmental authority is the NOAA Office of

Law Enforcement divisional office nearest to the port, or other authorized personnel. Mobulid rays that are caught and landed in this manner may not be sold or bartered, but may be donated for purposes of domestic human consumption consistent with relevant laws and policies.

(j) *Mobulid ray handling and release.* The crew, operator, and owner of a U.S. commercial fishing vessel must promptly release unharmed, to the extent practicable, any mobulid ray (whether live or dead) caught in the IATTC Convention Area as soon as it is seen in the net, on the hook, or on the deck, without compromising the safety of any persons. If a mobulid ray is live when caught, the crew, operator, and owner of a U.S. commercial fishing vessel must use the release procedures described in the following two paragraphs.

(1) No mobulid ray may be gaffed, no mobulid ray may be lifted by the gill slits or spiracles or by using bind wire against or inserted through the body, and no holes may be punched through the bodies of mobulid ray (*e.g.*, to pass a cable through for lifting the mobulid ray).

(2) Applicable to purse seine operations, large mobulid rays must be brailled out of the net by directly releasing the mobulid ray from the brailer into the ocean. Large mobulid rays that cannot be released without compromising the safety of persons or the mobulid ray before being landed on deck, must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or lowered with a sling or net, using a crane if available. The minimum size for the sling or net must be at least 25 feet in diameter.

(k) *Shark handling and release requirements for purse seine vessels.* The crew, operator, and owner of a U.S. commercial purse seine fishing vessel must promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner must follow release

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procedures in the following two paragraphs.

(1) Sharks must be released out of the purse seine net by directly releasing the shark from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat, or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available.

(2) No shark may be gaffed or hooked, lifted by the head, tail, gill slits or spiracles, or lifted by using bind wire against or inserted through the body, and no holes may be punched through the bodies of sharks (*e.g.*, to pass a cable through for lifting the shark).

(1) *Shark line prohibition for longline vessels.* Any U.S. longline vessel used to fish for tuna or swordfish is prohibited from using any shark line in the IATTC Convention Area.

[81 FR 50403, Aug. 1, 2016, as amended at 81 FR 86970, Dec. 2, 2016; 82 FR 56178, Nov. 28, 2017; 84 FR 70048, Dec. 20, 2019; 85 FR 29669, May 18, 2020; 87 FR 40741, July 8, 2022]

§ 300.28 FAD restrictions.

(a) *FAD identification requirements for purse seine vessels.* (1) For each FAD deployed or modified on or after January 1, 2017, in the IATTC Convention Area, the vessel owner or operator must either: obtain a unique code from HMS Branch; or use an existing unique identifier associated with the FAD (*e.g.*, the manufacturer identification code for the attached buoy).

(2) U.S. purse seine vessel owners and operators shall ensure the characters of the unique code or unique identifier be marked indelibly at least five centimeters in height on the upper portion of the attached radio or satellite buoy in a location that does not cover the solar cells used to power the equipment. For FADs without attached radio or satellite buoys, the characters shall be on the uppermost or emergent top portion of the FAD. The vessel owner or operator shall ensure the marking is visible at all times during

daylight. In circumstances where the on-board observer is unable to view the code, the captain or crew shall assist the observer (*e.g.*, by providing the FAD identification code to the observer).

(b) *Activating FADs for purse seine vessels.* When deploying a FAD in the IATTC Convention Area, a vessel owner, operator, or crew must activate the satellite buoy while the FAD is on-board the purse seine vessel and before it is deployed in the water.

(c) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of purse-seine vessels with the following well volume in cubic meters (m³) must not have more than the following number of Active FADs per vessel in the IATTC Convention Area at any one time during the following years.

TABLE 1 TO PARAGRAPH (c)

Well volume (m ³)	Active FAD limit
For 2022 calendar year	
1,200 or more	400
426–1,199	270
213–425	110
0–212	66
For 2023 calendar year	
1,200 or more	340
426–1,199	255
213–425	105
0–212	64
For 2024 calendar year and beyond	
1,200 or more	340
426–1,199	210
213–425	85
0–212	50

(d) *Restrictions on satellite buoy deactivations.* A vessel owner or operator that deactivates a satellite buoy attached to a FAD must comply with the reporting requirements for buoy deactivations in §300.22(c)(3). A U.S. vessel owner or operator shall only deactivate a satellite buoy attached to a FAD that was activated in the IATTC Convention Area in the following circumstances:

- (1) Complete loss of signal reception;
- (2) Beaching;
- (3) Appropriation of a FAD by a third party;

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(4) Temporarily during a selected closure period;

(5) For being outside of the area between the meridians 150° W and 100° W, and the parallels 8° N and 10° S; the area between the meridian 100° W and the coast of the American continent and the parallels 5° N and 15° S; or

(6) Transfer of ownership.

(e) *Restrictions on satellite buoy reactivations.* A vessel owner or operator that reactivates a satellite buoy must comply with the reporting requirements for satellite buoy reactivations in § 300.22(c)(4). A U.S. vessel owner or operator shall only remotely reactivate a satellite buoy at sea that was activated in the IATTC Convention Area in the following circumstances:

(1) To assist in the recovery of a beached FAD;

(2) After a temporary deactivation during the closure period; or

(3) Transfer of ownership while the FAD is at sea.

(f) *Restrictions on FAD deployments and removals.* (1) U.S. vessel owners, operators, and crew of purse seine vessels of class size 4–6 (more than 182 metric tons carrying capacity) must not deploy a FAD during a period of 15 days prior to the start of the selected closure period described in § 300.25(e)(1).

(2) During the 15 days prior to the start of the closure period selected by the vessel per § 300.25(e)(1), U.S. vessel owners, operators, and crew of purse seine vessels of class size 6 (greater than 363 metric tons carrying capacity) must remove from the water a number of FADs equal to the number of FADs set upon by the vessel during that same 15 day period.

(g) *FAD design requirements to reduce entanglements.* All FADs onboard or deployed in the IATTC Convention Area by U.S. vessel owners, operators, or crew, must comply with the following design requirements:

(1) *Raft:* If the FAD design includes a raft (e.g., flat raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed; and,

(2) *Subsurface:* Any netting used in the subsurface structure of the FAD

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must be tightly tied into bundles (“sausages”), or have stretched mesh size less than 7 centimeters in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column.

[83 FR 15510, Apr. 11, 2018, as amended at 83 FR 62734, Dec. 6, 2018; 87 FR 40741, July 8, 2022]

§ 300.29 Observers.

The following requirements apply to all on-board fisheries observers required under this subpart, which includes observers on purse seine, longline vessels, and transshipment carrier vessels, and while on a fishing trip in the IATTC Convention Area.

(a) *Contact information.* A full list of U.S. longline and IATTC purse seine observer providers and U.S. Government contacts for situations described in paragraphs (b) through (d) of this section is available at the following website: <https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse>.

(b) *Loss of life.* In the event that an observer dies, is missing, or presumed fallen overboard, the owner or operator of the fishing vessel must immediately notify a U.S. Government contact and the observer provider.

(c) *Serious illness or injury.* The owner or operator of a fishing vessel of the United States shall immediately report serious illness or injury that threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. Government contact. In addition, the owner or operator of the fishing vessel must:

(1) Immediately cease fishing operations;

(2) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(3) Where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

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(4) Cooperate fully in any official investigations into the cause of the illness or injury.

(d) *Assault, intimidation, threat, or harassment.* For reporting violations in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened, or harassed, the owner or operator of the fishing vessel shall immediately notify the observer provider and the NOAA Office of Law Enforcement West Coast Division Duty Officer line at (206) 526-4851 of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

(1) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(2) If the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and

(3) Cooperate fully in any official investigations into the incident.

[85 FR 29669, May 18, 2020]

Subpart D—South Pacific Tuna Fisheries

AUTHORITY: 16 U.S.C. 973–973r.

§ 300.30 Purpose and scope.

This subpart implements the South Pacific Tuna Act of 1988 (Act) and the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and applies to persons and vessels subject to the jurisdiction of the United States.

§ 300.31 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Treaty, and unless the context requires otherwise, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

Administrator means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States.

Applicable national law means any of the laws of Pacific Island Parties in the following table and any regulations or other instruments having the force of law implemented pursuant to these laws:

Pacific Island Party	Laws
AUSTRALIA	Antarctic Marine Living Resources Conservation Act, 1981. Fisheries Management Act, 1991. Fisheries Administration Act, 1991. Statutory Fishing Rights Charge Act, 1991. Fisheries Legislation (Consequential Provisions) Act, 1991. Foreign Fishing Licences Levy Act, 1991. Fishing Levy Act, 1991. Fisheries Agreements (Payments) Act, 1991. Torres Strait Fisheries Act, 1984. Whale Protection Act, 1980.
COOK ISLANDS	Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979. Territorial Sea and Exclusive Economic Zone Act, 1977. Marine Resources Act, 1989.
FEDERATED STATES OF MICRONESIA	Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2–28, 2–31, 3–9, 3–10, 3–34, and 3–80.
FIJI	Fisheries Act (Cap. 158). Fisheries Regulations (Cap. 158). Marine Spaces Act (Cap. 158A). Marine Spaces (Foreign Fishing Vessels) Regulations, 1979.
KIRIBATI	Fisheries Ordinance, 1979. Fisheries (Amendment) Act, 1984. Marine Zones (Declaration) Act, 1983. Fisheries (Pacific Island States' Treaty with the United States) Act 1988.
MARSHALL ISLANDS	Title 33, Marine Resources Act, as amended by P.L. 1989–56, P.L. 1991–43, and P.L. 1992–25 of the Marshall Islands Revised Code.

Pacific Island Party	Laws
NAURU	Interpretation Act, 1971. Interpretation Act (Amendment) Act No. 1 1975. Interpretation Act (Amendment) Act No. 2 1975. Marine Resources Act, 1978.
NEW ZEALAND	Antarctic Marine Living Resources Act, 1981. Continental Shelf Act, 1964. Conservation Act, 1987. Driftnet Prohibition Act, 1991. Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978. Fishing Industry Board Act, 1963. Fisheries Act, 1983. Marine Mammals Protection Act, 1978. Marine Reserves Act, 1971. Marine Pollution Act, 1974. Meat Act, 1964. Territorial Sea and Exclusive Economic Zone Act, 1977. Tokelau (Territorial Sea and Exclusive Economic Zone) Act, 1977. Submarine Cables and Pipelines Protection Act, 1966. Sugar Loaf Islands Marine Protected Area Act, 1991. Wildlife Act, 1953.
NIUE	Niue Fish Protection Ordinance 1965. Sunday Fishing Prohibition Act 1980. Territorial Sea and Exclusive Economic Zone Act 1978.
PALAU	Palau National Code, Title 27.
PAPUA NEW GUINEA	Fisheries Act (Cap 214). Fisheries Regulations (Cap 214). Fisheries (Torres Strait Protected Zone) Act, 1984. National Seas Act (Cap 361). Tuna Resources Management Act (Cap 224). Whaling Act (Cap 225).
SOLOMON ISLANDS	Delimitation of Marine Waters Act, 1978. Fisheries Act, 1972. Fisheries Limits Act, 1977. Fisheries Regulations, 1972. Fisheries (Foreign Fishing Vessels) Regulations, 1981. Fisheries (United States of America) (Treaty) Act 1988. Fisheries Act, 1989.
TONGA	Fisheries Act (Cap 45).
TUVALU	Fisheries (Foreign Fishing Vessel) Regulations, 1982. Marine Zones (Declaration) Act, 1983. Foreign Fishing Vessels Licensing (US Treaty) Order 1987.
VANUATU	Fisheries Act 1982 (Cap 158). Fisheries Regulations, 1983. Maritime Zones Act 1981 (Cap 138).
SAMOA	Exclusive Economic Zone Act, 1977. Territorial Sea Act, 1971. Fisheries Act, 1988.

Authorized inspector means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish and to gather any other information relating to fisheries in the Licensing Area.

Authorized officer means any officer who is authorized by the Secretary, or the Secretary of Transportation, or the head of any Federal or state agency that has entered into an enforcement

agreement with the Secretary under section 10(a) of the Act.

Authorized party officer means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

Closed area means any of the areas in the following table, as depicted on charts provided by the Regional Administrator and as further described in additional information that may be provided by the Regional Administrator:

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Pacific Island Party	Area
AUSTRALIA	All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25° 30' South with the point of intersection of the meridian of longitude 151° East by the outer limit of the AFZ and all waters south of the parallel of latitude 25° 30' South.
COOK ISLANDS	Territorial Sea.
FEDERATED STATES OF MICRONESIA	Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts: DMAHTC NO 81019 (2nd. ed., Mar. 1945; revised 7/17/72; corrected through NM 3/78 of 21 June 1978). DMAHTC NO 81023 (3rd. ed., 7 Aug. 1976). DMAHTC NO 81002 (4th. ed., 26 Jan. 1980; corrected through NM 4/80).
FIJI	Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.
KIRIBATI	Within archipelagic waters as established in accordance with Marine Zones (Declaration) Act 1983; within 12 nautical miles drawn from the baselines from which the territorial seas is measured; and within 2 nautical miles of any anchored fish aggregating device within the Kiribati exclusive economic zone for which notification of its location shall be given by geographical coordinates.
MARSHALL ISLANDS	12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device within the Marshall Islands exclusive economic zone for which notification of its location shall be given by geographical coordinates.
NAURU	The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2.
NEW ZEALAND	Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu; and coordinates as follows: Atafu: 8°35'10" S, 172°29'30" W Nukunonu: 9°06'25" S, 171°52'10" W 9°11'30" S, 171°47'00" W Faka'ofu: 9°22'30" S, 171°16'30" W
NIUE	Territorial sea and within 3 nautical miles of Beveridge Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).
PALAU	Within 12 nautical miles of all island baselines in the Palau Islands; and the area: commencing at the north-easternmost intersection of the outer limit of the 12 nautical mile territorial sea of Palau by the arc of a circle having a radius of 50 nautical miles and its center at Latitude 07°16'34" North, longitude 134°28'25" East, being at about the center of the reef entrance to Malakal Pass; running thence generally south-easterly, southerly, south-westerly, westerly, north-westerly, northerly and north-easterly along that arc to its intersection by the outer limit of the 12 nautical mile territorial sea; and thence generally northerly, north-easterly, easterly, south-easterly and southerly along that outer limit to the point of commencement. Where for the purpose of these specifications it is necessary to determine the position on the surface of the Earth of a point, line or area, it shall be determined by reference to the World Geodetic System 1984; that is to say, by reference to a spheroid having its center at the center of the Earth and a major (equatorial) radius of 6,378,137 meters and a flattening of 1/298.2572.
PAPUA NEW GUINEA	All territorial seas, archipelagic and internal waters.
SOLOMON ISLANDS	All internal waters, territorial seas and archipelagic waters; and such additional waters around the main group archipelago, as defined under the Delimitation of Marine Waters Act 1978, not exceeding sixty nautical miles.
TONGA	All waters with depths of not more than 1,000 meters, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau.
TUVALU	Territorial sea and waters within two nautical miles of all named banks, that is Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu exclusive economic zone, as depicted on the chart entitled "Tuvalu Fishery Limits" prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981.
VANUATU	Archipelagic waters and the territorial sea, and internal waters.
SAMOA	Territorial sea; reefs, banks and sea-mounts and within 2 nautical miles of any anchored fish aggregating device within the Samoa exclusive economic zone for which notification of its location shall be given by geographical coordinates.

FFA Vessel Register means the registry of fishing vessels maintained by the FFA, comprising those vessels

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which are in good standing and licensed to fish in the waters of FFA member countries, including those vessels licensed under § 300.32.

Fishing means searching for, catching, taking, or harvesting fish; attempting to search for, catch, take, or harvest fish; engaging in any other activity that can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or aircraft use, relating to the activities described in this definition, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

Fishing arrangement means an arrangement between a Pacific Island Party and the owner of a U.S. fishing vessel that complies with section 6(b) of the Act.

Fishing vessel or *vessel* means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for commercial fishing, and that is documented under the laws of the United States.

Licensing Area means all waters in the Treaty Area except for:

(1) Those waters subject to the jurisdiction of the United States in accordance with international law.

(2) Those waters within closed areas.

(3) Those waters within limited areas closed to fishing.

Licensing period means the period of validity of licenses issued in accordance with the Treaty.

Operator means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

Pacific Island Party means a Pacific island nation that is a party to the Treaty.

Pacific Islands Forum Fisheries Agency or *FFA* means the organization established by the 1979 South Pacific Forum Fisheries Agency Convention.

Regional Administrator means the Regional Administrator, Pacific Islands Region, NMFS, 1845 Wasp Blvd., Bldg.

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176, Honolulu, HI 96818, facsimile: 808–725–5215, or a designee.

Transship means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

Treaty Area means all waters north of 60° S. lat. and east of 90° E. long., subject to the fisheries jurisdiction of Pacific Island Parties, and all other waters within rhumb lines connecting the following points, except for waters subject to the jurisdiction in accordance with international law of a State which is not a party to the Treaty:

Point	Latitude	Longitude
A	2°35'39" S	141°00'00" E
B	1°01'35" N	140°48'35" E
C	1°01'35" N	129°30'00" E
D	10°00'00" N	129°30'00" E
E	14°00'00" N	140°00'00" E
F	14°00'00" N	142°00'00" E
G	12°30'00" N	142°00'00" E
H	12°30'00" N	158°00'00" E
I	15°00'00" N	158°00'00" E
J	15°00'00" N	165°00'00" E
K	18°00'00" N	165°00'00" E
L	18°00'00" N	174°00'00" E
M	12°00'00" N	174°00'00" E
N	12°00'00" N	176°00'00" E
O	5°00'00" N	176°00'00" E
P	1°00'00" N	180°00'00" W
Q	1°00'00" N	164°00'00" W
R	8°00'00" N	164°00'00" W
S	8°00'00" N	158°00'00" W
T	0°00'00" S	150°00'00" W
U	6°00'00" S	150°00'00" W
V	6°00'00" S	146°00'00" W
W	12°00'00" S	146°00'00" W
X	26°00'00" S	157°00'00" W
Y	26°00'00" S	174°00'00" W
Z	40°00'00" S	174°00'00" W
AA	40°00'00" S	171°00'00" W
AB	46°00'00" S	171°00'00" W
AC	55°00'00" S	180°00'00" W
AD	59°00'00" S	160°00'00" E
AE	59°00'00" S	152°00'00" E and north along the 152 degrees of East longitude until intersecting the Australian 200-nautical-mile limit.

UTC means Universal Coordinated Time.

Vessel Monitoring System Unit or *VMS unit*, sometimes known as a “mobile transmitting unit,” means Administrator-approved and NMFS-approved VMS unit hardware and software that is installed on a vessel pursuant to § 300.45. The VMS units are a component of the regional vessel monitoring system administered by the FFA, as well as of the vessel monitoring system administered by NMFS, and as such are used to transmit information between

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the vessel and the Administrator and NMFS and/or other reporting points designated by NMFS.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6149, Feb. 9, 2007; 75 FR 74643, Dec. 1, 2010; 79 FR 64110, Oct. 28, 2014]

§ 300.32 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless exempted by § 300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a copy or facsimile thereof must be carried on board the vessel when in the Licensing Area or Closed Areas, and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. A vessel may be used to fish in the Licensing Area if the license has been issued but not yet received, provided that the license number is available on board.

(c) The total number of licenses that may be issued and valid at any point in time is 45, five of which shall be reserved for fishing vessels of the United States engaged in joint venture arrangements.

(1) For the purpose of this section, the licenses reserved for vessels engaged in joint venture arrangements are referred to as "joint venture licenses," and the remaining licenses are referred to as "general licenses."

(2) A joint venture arrangement is one in which the subject vessel and its operators are engaged in fishing-related activities designed to maximize the benefits generated for the Pacific Island Parties from the operations of fishing vessels licensed pursuant to the Treaty, as determined by the Administrator. Such activities can include the use of canning, transshipment, vessel slipping and repair facilities located in the Pacific Island Parties; the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island Parties; and the employment of nationals of the Pacific Island Parties on board such vessels.

(d) Licenses are issued by the Administrator. The Administrator will issue licenses only for applications that have been approved by the Regional Admin-

istrator. The Regional Administrator's approval is indicated by the signature of the Regional Administrator on the part of the application form labeled "Schedule 1." Upon approval by the Regional Administrator of a license application, the complete application will be forwarded to the Administrator for consideration. Except as provided in paragraph (n) of this section, prior to approving license applications for a given licensing period, the Regional Administrator will issue pre-approvals of license applications that serve the purpose of temporarily reserving approvals up until the time complete applications are due to be received by the Regional Administrator.

(e) The Regional Administrator, in his or her sole discretion, may approve fewer license applications than there are licenses available for any given licensing period or at any given time.

(f) A pre-approval or approval issued by the Regional Administrator pursuant to this section:

(1) Shall not confer any right of compensation to the recipient of such pre-approval or approval;

(2) Shall not create, or be construed to create, any right, title, or interest in or to a license or any fish; and

(3) Shall be considered a grant of permission to the recipient of the pre-approval or approval to proceed with the process of seeking a license from the Administrator.

(g) A pre-approval or approval issued by the Regional Administrator pursuant to this section is subject to being rescinded at any time if the Regional Administrator determines that an administrative error has been made in its granting, false information has been provided by the applicant, circumstances have changed such that the information provided by the applicant is no longer accurate, true or valid, or if the applicant or vessel no longer meets the requirements for licensing under this subpart or under the Act or other applicable law. NMFS will notify the applicant of its rescission of a pre-approval or approval within 14 days of the rescission. In the event that the Regional Administrator rescinds an approval after the license has been

issued, NMFS will notify the Administrator of such, and request that the Administrator immediately revoke the license.

(h) *Application process for general licenses.* (1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a general license.

(2) In order for a general license to be issued for a vessel, an applicant must submit a complete application to, and obtain an application approval from, the Regional Administrator.

(3) Except for the 2011–2012 licensing period, prior to submitting a complete application, an applicant may request pre-approval of an application by the Regional Administrator by submitting an expression of interest. A pre-approval of an application establishes that the applicant is eligible to be considered for one of the available licenses following timely submission of a complete application. Although submission of an expression of interest is entirely voluntary, applications that have not been pre-approved might not be eligible for approval if the number of applications exceeds the number of available licenses for a given licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(4) Except as provided in paragraph (n) of this section, in order to obtain a pre-approval for a given licensing period, either an expression of interest or a complete application must be submitted to and received by the Regional Administrator no later than June 1st of the year preceding the year in which the licensing period begins.

(5) An expression of interest must include the information listed below, which may be submitted by electronic or hard-copy correspondence following instructions provided by the Regional Administrator.

(i) If the expression of interest is for a vessel for which, as of the June 1st due date for submitting such expression of interest, NMFS has issued an application approval for the licensing period that starts that year (i.e., a renewal of the license is being sought), the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The current name, IRCS, and annual USCG Certificate of Documentation number of the vessel.

(ii) For all other expressions of interest that do not meet the criteria in paragraph (h)(5)(i) of this section, the expression of interest shall include:

(A) The licensing period for which the license is being sought.

(B) The full name and address of each person who is, or who is anticipated to be, an operator of the vessel for which a license is sought, and for each such person, a statement of whether the person is, or is anticipated to be, owner, charterer, and/or master of the vessel.

(C) A statement of whether or not the vessel to be licensed is known, and if it is known, the current name, IRCS, and annual USCG Certificate of Documentation number, if any, of the vessel.

(D) A copy of the vessel's current USCG Certificate of Documentation. If the vessel has not been issued such a document, then a statement of whether application has been or will be made for a USCG Certificate of Documentation, including identification of all endorsements sought in such application.

(E) If the vessel is known, a list of the licensing periods, if any, during which a license for the vessel was issued under this section.

(F) If the vessel is known, a statement of the total amount, in metric tons, of any tuna species landed or transshipped from the vessel at United States ports, including ports located in any of the States, for each of the calendar years 1988 through the current year.

(6) A complete application for a given licensing period may be submitted to the Regional Administrator at any time up to May 15th within the licensing period, but in order to be considered for approval in the event that more applications are received by the Regional Administrator than there are licenses available, a complete application must be received by the Regional Administrator as follows:

(i) No later than February 5th of the year in which the licensing period begins; or

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(ii) If a pre-approval of the application was issued in accordance with paragraphs (k)(8) or (k)(9) of this section, not later than the date specified by NMFS in the notification of such pre-approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval).

(7) License application forms, which include the "Schedule 1" form and the FFA Vessel Register application form, are available from the Regional Administrator. The complete application must be received by the Regional Administrator as specified in paragraph (h)(6) of this section. An application shall not be complete, and shall not be subject to processing, unless it contains all of the information specified on the "Schedule 1" form and all the items listed in paragraphs (h)(7)(i) through (h)(7)(x) of this section, as follows:

(i) The licensing period for which the license is requested.

(ii) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.

(iii) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

(iv) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, a statement that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.

(v) A copy of the vessel's current annual USCG Certificate of Documentation.

(vi) Electronic versions of full color photographs of the vessel in its current form and appearance, including a bow-to-stern side-view photograph of the vessel that clearly and legibly shows the vessel markings, and a photograph of every area of the vessel that is marked with the IRCS assigned to the vessel.

(vii) A schematic stowage/well plan for the vessel.

(viii) A copy of the VMS unit installation certificate, issued by the Administrator-authorized person who installed the VMS unit, for the VMS unit installed on the vessel in accordance with § 300.45.

(ix) An FFA Vessel Register application form that includes all the applicable information specified in the form.

(x) In the case of an application for a vessel that does not meet the criteria in paragraph (h)(5)(i) of this section, any information under paragraph (h)(5)(ii) of this section that has not already been provided or that has changed since it was previously submitted.

(i) *Application process for joint venture licenses.* (1) A vessel operator who satisfies the requirements for licensing under the Act and under this subpart may apply for a joint venture license.

(2) The applicant, in coordination with one or more Pacific Island Parties, shall contact the Administrator to determine the specific information and documents that are required by the Administrator in order to obtain an initial approval from the Administrator for a joint venture license. The applicant shall submit such required information and documents directly to the Administrator. Once an initial approval is obtained from the Administrator, the applicant shall submit a complete application package, as described in paragraph (h)(7) of this section, to the Regional Administrator, along with dated documentation of the Administrator's initial approval, and a letter or other documentation from the relevant national authority or authorities of the Pacific Island Party or Parties identifying the joint venture partner or partners and indicating the Party's or Parties' approval of the joint venture arrangement and its or their concurrence that a joint venture license may be issued for the vessel.

(j) *Appeals*—(1) *Eligibility.* Any applicant who is denied a pre-approval or an approval under this section may appeal the denial. The appeal must be made in writing and must clearly state the basis for the appeal and the nature of the relief that is requested. The appeal must be received by the Regional Administrator not later than 14 days after

the date that the notice of denial is postmarked.

(2) *Appeal review.* Upon receipt of an appeal, the Regional Administrator will appoint a designee who will review the basis of the appeal and issue an initial written decision. The written decision will be mailed to the applicant within 30 days of receipt of the appeal. If the appellant does not request a review within 10 days of mailing of the initial decision, the initial decision is the final administrative action of the Department of Commerce. If, within 10 days of mailing of the initial decision, the Regional Administrator receives from the appellant a written request for review of the initial decision, the Assistant Administrator or a designee will review the basis of the appeal and issue a final written decision. The final decision will be made within 30 days of receipt of the request for review of the initial decision. The decision of the Assistant Administrator or designee constitutes the final administrative action of the Department of Commerce.

(k) *Procedures used by the Secretary to review and process applications for general licenses.* The procedures in this paragraph apply to the process used by NMFS, on behalf of the Secretary and in consultation with the Secretary of State, to review expressions of interest and complete applications, and to approve applications. For the purpose of this section, NMFS' approval of an application means the signing by the Regional Administrator of the "Schedule 1" part of the application form, indicating that the application is complete and that it meets the requirements of the Act and of this subpart for forwarding to the Administrator. For the purpose of this section, NMFS' pre-approval of an application means that the Regional Administrator has initially determined that the applicant is eligible for a general license, but that the application has not yet been approved for forwarding to the Administrator.

(1) NMFS will pre-approve no more applications for a given licensing period than there are licenses available for that licensing period. A pre-approval will be deemed to be void if the applicant fails to submit a complete application by the date established in paragraph (h)(6) of this section.

(2) NMFS will approve no more applications for a given licensing period than there are licenses available for that licensing period.

(3) NMFS will not approve a license application if it determines that:

(i) The application is not in accord with the Treaty, Act, or regulations;

(ii) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(iii) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(iv) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(4) Except as provided in paragraph (n) of this section, no later than July 16th of each year, NMFS will pre-approve applications from among the expressions of interest and complete applications that were received by June 1st of the current year for the licensing period that starts the following year as provided in this paragraph. If the number of expressions of interest and complete applications does not exceed the number of licenses available, all applications that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be pre-approved. If the number of expressions of interest and complete applications exceeds the number of licenses available, those that meet the requirements of paragraphs (h)(4) and (h)(5) of this section and that satisfy the relevant requirements for licensing under the Act and this subpart will be prioritized for pre-approval as follows:

(i) First priority will be given to expressions of interest and complete applications for vessels for which, as of June 1st of that year, application approvals have been issued by NMFS for

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the licensing period that starts that year (*i.e.*, anticipated license renewal applications), provided that such vessels continue to satisfy the requirements for licensing under the Act and this subpart, and provided such vessels have no unsatisfied civil penalties or fines assessed by the Secretary under the Act that have become final.

(ii) Second priority will be given to expressions of interest and complete applications scored using the following system, in descending order of the sum of the points assigned:

(A) 15 points will be assigned for a vessel that has been issued, or will be issued by the date complete applications are due to be received by the Regional Administrator under paragraph (h)(6) of this section, a valid USCG Certificate of Documentation with a fishery endorsement.

(B) 1 point will be assigned for each licensing period, starting with the 1988–1989 licensing period, in which a license had been issued for the vessel pursuant to the Act, for a total of no more than 10 points.

(C) 1 point will be assigned for each calendar year in which at least 3,000 metric tons of fish were landed or transshipped from the vessel in United States ports, including ports located in any of the States, as determined by the Regional Administrator. The applicable period shall run from 1988 through the last calendar year prior to the year in which the applied-for licensing period starts, and the total number of points assigned shall be no more than 5.

(D) In the event that two or more vessels receive the same sum number of points under paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(C) of this section, priority will be given to the vessel from which the greatest amount of fish, by weight, was landed or transshipped in United States ports, including ports located in any of the States, starting in calendar year 1988 and ending in the year prior to the year in which the applied-for licensing period starts, as determined by the Regional Administrator. In the event that that does not resolve the tie, priority will be given by lottery, which will be conducted by the Regional Administrator.

(5) Except as provided in paragraph (n) of this section, no later than July 26th of each year, NMFS will send notifications by mail to all applicants that submitted expressions of interest or complete applications by June 1st of that year, indicating whether their applications (for the licensing period that starts the following year) have been pre-approved.

(6) No later than March 7th of each year, NMFS will approve applications (for the licensing period that starts that year) that satisfy all of the following conditions:

(i) The application was pre-approved;

(ii) The information associated with the application has not changed since the point of pre-approval in a way such that pre-approval would not have been made using the updated information;

(iii) The complete application was received by February 5th of the same year; and

(iv) The applicant satisfies the requirements for licensing under the Act and this subpart.

(7) No later than March 17th of each year, NMFS will notify all applicants (for the licensing period that starts that year) who submitted complete applications by February 5th of that year, whether their applications have been approved under paragraph (k)(6) of this section, and in cases where they have not, whether their applications are being considered for approval under paragraph (k)(8) of this section.

(8) In the event that additional licenses for a given licensing period are available after issuing the approvals under paragraph (k)(6) of this section, NMFS will, after final administrative action by the Department of Commerce on any appeals made under paragraph (j) of this section, do the following:

(i) If the number of outstanding expressions of interest (*i.e.*, expressions of interest that have not been pre-approved) received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications (*i.e.*, complete applications that have not been approved) received by February 5th of the year in which the licensing period begins, exceeds the number of licenses available, NMFS

will review all such outstanding expressions of interest and complete applications and apply the process described in paragraphs (k)(9)(i)(A) through (k)(9)(i)(C) of this section to pre-approve and approve applications from among that pool of applicants;

(ii) If the number of outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins, plus the number of outstanding complete applications received by February 5th of the year in which the licensing period begins, does not exceed the number of licenses available:

(A) No later than June 15th of the year in which the licensing period begins, NMFS will pre-approve all such outstanding expressions of interest and complete applications that satisfy the relevant requirements for licensing under the Act and this subpart;

(B) No later than June 25th of the year in which the licensing period begins, NMFS will notify all such outstanding applicants of the pre-approvals, and for those applicants that submitted expressions of interest but not complete applications, also notify them of the date by which a complete application must be received in order to be issued an application approval (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval);

(C) NMFS will review all complete applications received by the required date from applicants pre-approved under paragraph (8)(ii)(A) of this section, and within 30 days of such receipt, approve the application, if and as appropriate and if the applicant satisfies the requirements for licensing under the Act and this subpart; and

(D) If and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the total number of licenses available under paragraph (c) of this section, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, as they are received and in the order they are received (based on the day of receipt), will approve those applications that satisfy the require-

ments for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.

(iii) Within 10 days of approving an application, NMFS will notify the applicant.

(9) If a license or application approval that has been issued for a given licensing period becomes available before or during that licensing period, NMFS will do the following:

(i) If there are any outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins or outstanding complete applications received by February 5th of the year in which the licensing period begins, NMFS will review all such outstanding expressions of interest and complete applications and pre-approve and approve applications for that license from among that pool as follows:

(A) Within 45 days of NMFS becoming aware of the availability of the license, NMFS will pre-approve an application using the prioritization criteria and point-assigning system described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section;

(B) Within 55 days of NMFS becoming aware of the availability of the license NMFS will notify all active applicants as to whether their applications have been pre-approved, and for those applications that have been pre-approved, notify each applicant of the date by which a complete application, if not already received, must be received (which will be calculated by NMFS to be no later than 194 days from the date of mailing of the notification of the pre-approval); and

(C) Within 30 days of receiving a complete application that had been pre-approved, NMFS will approve the application, if and as appropriate and if the applicant satisfies the requirements of this subpart.

(ii) If there are no outstanding expressions of interest received by June 1st of the year preceding the year in which the licensing period begins and no outstanding complete applications

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received by February 5th of the year in which the licensing period begins, if and as long as the number of approvals plus outstanding (not voided) pre-approvals does not exceed the number of licenses available, NMFS will review all complete applications received after February 5th of the year in which the licensing period begins and before May 16th within the licensing period and, in the order they are received (based on the day of receipt), will approve those applications that satisfy the requirements for licensing under the Act and this subpart until no more approvals are available. In the event that two or more complete applications are received on the same day, priority for approval will be given by lottery, which will be conducted by the Regional Administrator.

(iii) Within 10 days of approving an application, NMFS will notify the applicant.

(1) *Procedures used by the Secretary to review and process applications for joint venture licenses.* NMFS, on behalf of the Secretary and in consultation with the Secretary of State, will review and approve applications for joint venture licenses as described in paragraph (k) of this section for general licenses, except that NMFS will not consider expressions of interest for joint venture licenses or pre-approve applications for joint venture licenses. In the event that NMFS receives for a given licensing period more applications for joint venture licenses than there are licenses available, it will approve the applications in the chronological order that the Administrator has provided its initial approval.

(m) *Transferability of application approvals.* Application approvals from NMFS are not transferable among vessel owners or operators or license applicants. Application approvals are transferable among vessels, subject to the following requirements:

(1) A vessel operator may seek to transfer a general or joint venture license to another vessel that meets the requirements for licensing under this subpart and the Act, only if the license has been valid for the vessel for at least 365 consecutive days and all the fees required by the Administrator for the current licensing period have been

paid to the Administrator. The vessel operator may seek to transfer the license by submitting a written request to the Regional Administrator along with a complete application for the other vessel as described in paragraph (h)(7) of this section. Any such transfer may be subject to additional fees for the registration of the vessel on the FFA Vessel Register, as specified in paragraph (b) of §300.45.

(2) Upon receipt of a request and complete application under paragraph (m)(1) of this section, the Regional Administrator, after determining that all the fees required for the vessel by the Administrator for the current licensing period have been paid, that the ownership of the licensed vessel and the ownership of the vessel to which the application approval would be transferred are identical, and that the transferee vessel meets the requirements for licensing under this subpart and the Act, will approve the application and notify the applicant of such within 10 days of the determination.

(3) If a licensed vessel is lost or destroyed, and the operators of the vessel apply for a license for another vessel for the licensing period during which the vessel was lost, or for either of the two subsequent licensing periods, NMFS will consider the replacement vessel to have the license application approval status and history of the lost or destroyed vessel for the purpose of applying the prioritization criteria of paragraph (k)(4) of this section, provided that the ownership of the lost or destroyed vessel and the ownership of the replacement vessel, as determined by the Regional Administrator, are identical, and the replacement vessel meets the requirements for licensing under this subpart and the Act.

(n) *Procedures for 2011–2012 licensing period.* For the licensing period that starts June 15, 2011, and for that licensing period only, pre-approvals may not be sought and will not be issued by NMFS. NMFS will rank order those applications received by February 5, 2011, for the 2011–2012 licensing period by applying the criteria in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, except that in lieu of using the criteria in (k)(4)(i), first priority will be given to applications for vessels that as of

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February 5, 2011, have valid licenses for the 2010–2011 licensing period.

[75 FR 74644, Dec. 1, 2010]

§ 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 300.34 Reporting requirements.

(a) Holders of licenses issued under § 300.32 shall comply with the reporting requirements of this section with respect to the licensed vessels.

(b) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Administrator.

(c) The operator of any vessel licensed under § 300.32 must prepare and submit accurate, complete, and timely notifications, requests, and reports with respect to the licensed vessel, as described in paragraphs (c)(1) through (10) of this section.

(1) *Catch report forms.* A record of catch, effort and other information must be maintained on board the vessel, on catch report forms (also known as “Regional Purse Seine Logsheets”, or RPLs) provided by the Regional Administrator. At the end of each day that the vessel is in the Licensing Area, all information specified on the form must, for that day, be recorded on the form. The completed catch report form must be mailed by registered airmail to the Administrator within 14 days of the vessel’s next entry into port for the purpose of unloading its fish catch. A copy of the completed catch report form must also be submitted to, and received by, the Regional Administrator within 2 days of the vessel reaching port.

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(2) *Unloading and transshipment logsheet forms.* At the completion of any unloading or transshipment of fish from the vessel, all the information specified on unloading and transshipment logsheet forms provided by the Regional Administrator must, for that unloading or transshipment, be recorded on such forms. A separate form must be completed for each fish processing destination to which the unloaded or transshipped fish are bound. The completed unloading and transshipment logsheet form or forms must be mailed by registered airmail to the Administrator within 14 days of the completion of the unloading or transshipment. The submitted form must be accompanied by a report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, and such report must be signed by the receiver or receivers. A copy of the completed unloading and transshipment logsheet, including a copy of the accompanying report or reports of the size breakdown of the catch as determined by the receiver or receivers of the fish, must also be submitted to, and received by, the Regional Administrator within 2 days of the completion of the unloading or transshipment.

(3) *Port departure reports.* Before the vessel’s departure from port for the purpose of beginning a fishing trip in the Licensing Area, a report must be submitted to the Administrator by telex, transmission via VMS unit, facsimile, or e-mail that includes the following information: Report type (“LBEG”); Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date of departure. This information must be reported in the format provided by the Regional Administrator.

(4) *Entry into port for unloading reports.* At least 24 hours before the vessel’s entry into port for the purpose of unloading fish from any trip involving fishing within the Licensing Area, a report must be submitted to the Administrator by telex, transmission via

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VMS unit, facsimile, or e-mail that includes the following information: Report type ("LFIN"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; port name; weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and estimated date and time (in UTC) of entry into port. This information must be reported in the format provided by the Regional Administrator.

(5) *Intent to transship notification and request.* At least 48 hours before transshipping any or all of the fish on board the vessel, a notification must be submitted to the Administrator and a request must be submitted to the Pacific Island Party in whose jurisdiction the transshipment is requested to occur. The notification to the Administrator and the request to the Pacific Island Party may be identical. The notification and request must include the following information: Name of vessel; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board the vessel (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; and the date, time (in UTC), and location where such transshipment is requested to occur. The notification to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The request to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(6) *Zone entry and exit reports.* Each time the vessel enters or exits the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("ZENT" for entry or "ZEXT" for exit); FFA Regional Register number; trip begin date; date and time (in UTC) of the entry or exit; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species com-

bined; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(7) *Weekly reports.* Each Wednesday while the vessel is within the waters under the jurisdiction of a Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("WEEK"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; intended action; and whether or not there is a vessel observer on board ("Y" or "N"). This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(8) *Port entry reports.* At least 24 hours before the vessel's entry into port of any Pacific Island Party, a report must be submitted to that Pacific Island Party that includes the following information: Report type ("PENT"); FFA Regional Register number; trip begin date; date and time (in UTC) of report; IRCS; vessel position (latitude and longitude to nearest minute of arc); weight of catch on board (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; estimated time (in UTC) of entry into port; port name; and intended action. This information must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(9) *Transshipment reports.* Upon completion of transshipment of any or all of the fish on board the vessel, a report must be submitted to the Administrator and to the Pacific Island Party in whose jurisdiction the transshipment occurred. The report must include the following information: Report type ("TRANS"); FFA Regional Register number; trip begin date; date and time (in UTC) of the transshipment; IRCS; vessel position at time

of transshipment (latitude and longitude to nearest minute of arc); amount of fish transshipped (in metric tons) for each of skipjack tuna, yellowfin tuna, and all other species combined; name of vessel to which the fish were transshipped; and the destination of the transshipped fish. The report to the Administrator must be reported in the format provided by the Regional Administrator and submitted by telex, transmission by VMS unit, facsimile, or e-mail. The report to the Pacific Island Party must be reported in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(10) *Other reports and notifications to Pacific Island Parties.* Reports and notifications must be submitted to the relevant Pacific Island Parties in each of the circumstances and in the manner described in the subparagraphs of this paragraph. Unless otherwise indicated in this paragraph, the reports must be prepared in the format provided by the Regional Administrator and sent via the means and to the address provided by the Regional Administrator.

(i) *Australia.* (A) Each day while the vessel is within the Australian Fishing Zone, a report must be submitted that includes the following information: Vessel position (latitude and longitude to nearest minute of arc); and the amount of catch made during the previous day, by species.

(B) At least 24 hours before entering the Australian Fishing Zone, a notification must be submitted that indicates an intent to enter the Australian Fishing Zone.

(ii) *Fiji.* (A) Each day while the vessel is in Fiji fisheries waters, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; and vessel position at the time of the report (latitude and longitude to nearest minute of arc).

(B) Each week while the vessel is in Fiji fisheries waters, a report must be submitted that includes the amount of the catch made during the preceding week, by species.

(iii) *Kiribati.* (A) At least 24 hours before entering a Closed Area under the jurisdiction of Kiribati, a notification

must be submitted that includes the following information: vessel name; IRCS; vessel position at the time of the report (latitude and longitude to nearest minute of arc); the reason for entering the Closed Area; and the estimated time (in UTC) of entry into the Closed Area (latitude and longitude to nearest minute of arc).

(B) Immediately upon entry into or exit from a Closed Area under the jurisdiction of Kiribati, a report must be submitted that includes the following information: report type (“CAENT” for entry or “CAEXT” for exit); the number of the vessel’s license issued under §300.32; IRCS; date and time (in UTC) of the report; vessel position (latitude and longitude to nearest minute of arc); amount of the catch on board the vessel, by species; and status of the boom (“up” or “down”), net (“deployed” or “stowed”), and skiff (“deployed” or “stowed”).

(C) At least 24 hours prior to fueling the vessel from a tanker in the area of jurisdiction of Kiribati, a report must be submitted that includes the following information: report type (“SBUNK”); the number of the vessel’s license issued under §300.32; IRCS; trip start date; name of port from which trip started; amount of the catch on board the vessel, by species; estimated time of bunkering; estimated position of bunkering (latitude and longitude to nearest minute of arc); and name of tanker.

(D) After fueling the vessel from a tanker in the area of jurisdiction of Kiribati, but no later than 12 noon local time on the following day, a report must be submitted that includes the following information: report type (“FBUNK”); the number of the vessel’s license issued under §300.32; IRCS; start time of bunkering; end time of bunkering; amount of fuel received, in kiloliters; and name of tanker.

(iv) *New Zealand.* (A) At least 24 hours before entering the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: name of vessel; IRCS; position of point of entry into the exclusive economic zone of New Zealand (latitude and longitude to nearest minute of arc); amount of catch on board the vessel, by species;

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and condition of the catch on board the vessel ("fresh" or "frozen").

(B) For each day that the vessel is in the exclusive economic zone of New Zealand, a notification must be submitted no later than noon of the following day of the vessel's position (latitude and longitude to nearest minute of arc) at noon.

(C) For each week or portion thereof that the vessel is in the exclusive economic zone of New Zealand, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Wednesday (local time). The report must include the amount of the catch taken in the exclusive economic zone of New Zealand during the reporting period.

(D) At least 10 days prior to an intended transshipment in an area under the jurisdiction of New Zealand, a notification must be submitted that includes the intended port, date, and time of transshipment.

(E) At least 24 hours prior to exiting the exclusive economic zone of New Zealand, a notification must be submitted that includes the following information: position of the intended point of exit (latitude and longitude to nearest minute of arc); the amount of catch on board the vessel, by species; and condition of the catch on board the vessel ("fresh" or "frozen").

(v) *Solomon Islands*. (A) At least 24 hours prior to entry into Solomon Islands Fisheries Limits, a report must be submitted that includes the following information: expected vessel position (latitude and longitude to nearest minute of arc) and expected date and time of entry.

(B) For each week or portion thereof that the vessel is in the exclusive economic zone of Solomon Islands, a report that covers the period from 12:01 a.m. on Monday to 12 midnight on the following Sunday must be submitted and received by noon of the following Tuesday (local time). The report must include the amount of the catch taken and the number of fishing days spent in the exclusive economic zone of Solomon Islands during the reporting period.

(vi) *Tonga*. (A) Each day while the vessel is in the exclusive economic zone of Tonga, a report must be submitted that includes the vessel's position (latitude and longitude to nearest minute of arc).

(B) [Reserved]

(vii) *Tuvalu*. (A) At least 24 hours prior to entering Tuvalu fishery limits, a report must be submitted that includes the following information: vessel name; IRCS; country of registration of the vessel; the number of the vessel's license issued under § 300.32; intended vessel position (latitude and longitude to nearest minute of arc) at entry; and amount of catch on board the vessel, by species.

(B) Every seventh day that the vessel is in Tuvalu fishery limits, a report must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

(C) Immediately upon exit from Tuvalu fishery limits, a notification must be submitted that includes vessel position (latitude and longitude to nearest minute of arc) and the total amount of catch on board the vessel.

[72 FR 6151, Feb. 9, 2007]

§ 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm.

(b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a

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stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

§ 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 300.37 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

§ 300.38 Prohibitions.

(a) Except as provided for in § 300.39, in addition to the prohibitions in § 300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) To violate the Act or any provision of any regulation or order issued pursuant to Act.

(2) To use a vessel for fishing in violation of an applicable national law.

(3) To violate the terms and conditions of any fishing arrangement to which that person is a party.

(4) To use a vessel for fishing in any Closed Area.

(5) To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.

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(6) To refuse to comply with the instructions of an authorized officer or authorized party officer relating to fishing activities under the Treaty.

(7) To refuse to permit an authorized inspector full access to any place where fish taken in the Licensing Area is unloaded.

(8) To refuse to allow an authorized inspector to remove samples of fish from a vessel that fished in the Licensing Area.

(9) To forcibly assault, resist, oppose, impede, intimidate, or interfere with:

(i) Any authorized officer, authorized party officer or authorized inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or

(ii) An observer in the conduct of observer duties under the Treaty.

(10) To transship fish on board a vessel that fished in the Licensing Area, except in accordance with the requirements of § 300.46.

(11) To fail to have installed, allow to be programmed, carry, or have operational a VMS unit while in the Treaty Area as specified in § 300.45(a).

(12) To fail to activate a VMS unit, to interrupt, interfere with, or impede the operation of a VMS unit, to tamper with, alter, damage, or disable a VMS unit, or to move or remove a VMS unit without prior notification as specified in § 300.45(e).

(13) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area, to fail to submit manual position reports as specified in § 300.45(f).

(14) In the event of a VMS unit failure or breakdown or interruption of automatic position reporting in the Treaty Area and if directed by the Administrator or an authorized officer, to fail to stow fishing gear or take the vessel to a designated port as specified in § 300.45(f).

(15) To fail to repair or replace a VMS unit as specified in § 300.45(h).

(b) Except as provided for in § 300.39, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:

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(1) To use a vessel to fish unless validly licensed as required by the Administrator.

(2) To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental bycatch.

(3) To use a vessel for fishing by any method, except the purse-seine method.

(4) To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license.

(5) To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels.

(6) To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under § 300.42 (section 11 of the Act).

(7) Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel, unless it is identified on the license application for the vessel, or any amendment thereto.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6153, Feb. 9, 2007]

§ 300.39 Exceptions.

(a) The prohibitions of § 300.38 and the licensing requirements of § 300.32 do not apply to fishing for albacore tuna by vessels using the trolling method or to fishing by vessels using the longline method in the high seas areas of the Treaty Area.

(b) The prohibitions of § 300.38(a)(4), (a)(5), and (b)(3) do not apply to fishing under the terms and conditions of a fishing arrangement.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6153, Feb. 9, 2007]

§ 300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

§ 300.41 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

§ 300.42 Findings leading to removal from fishing area.

(a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

(1) The fishing vessel—

(i) While fishing in the Licensing Area did not have a license issued under § 300.32 to fish in the Licensing Area, and that under the terms of the Treaty the fishing is not authorized to be conducted in the Licensing Area without such a license.

(ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;

(iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(iv) Was not represented by an agent for service of process in accordance with the Treaty; or

(2) There is probable cause to believe that the fishing vessel—

(i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;

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(ii) Used an aircraft in violation of section 5(b)(7) of the Act; or

(iii) Was involved in an incident in which section 5(a)(7) of the Act was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made by a Pacific Island Party that such Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1) (iii) or (iv) of this section (subsections 11(a)(1) (C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) An order issued in accordance with this section is not subject to judicial review.

[61 FR 35550, July 5, 1996, as amended at 72 FR 6154, Feb. 9, 2007]

§ 300.43 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.

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(3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary.

(4) To carry out observer duties safely.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

§ 300.44 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

§ 300.45 Vessel Monitoring System.

(a) *Applicability.* Holders of vessel licenses issued under § 300.32 are required, in order to have the licensed vessel in the Treaty Area, to:

(1) Have installed a VMS unit on board the licensed vessel;

(2) Allow the Administrator, its agent, or a person authorized by the Administrator to program the VMS unit to transmit position and related information to the Administrator;

(3) If directed by the Regional Administrator, allow NMFS, its agent, or a person authorized by NMFS to program the VMS unit to transmit position and related information to NMFS; and

(4) Carry and have operational the VMS unit at all times while in the Treaty Area, except as provided in paragraphs (f) and (g) of this section.

(b) *FFA Vessel Register.* Purse seine vessels must be in good standing on the FFA Vessel Register maintained by the Administrator in order to be licensed

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under the Treaty. FFA Vessel Register application forms may be obtained from the Regional Administrator or the Administrator or from the FFA Web site: <http://www.ffa.int>. Purse seine vessel owners or operators must submit completed FFA Vessel Register applications to the Regional Administrator for transmittal to the Administrator and pay fees for registration of their vessel(s) on the FFA Vessel Register annually. The vessel owner or operator may submit a completed FFA Vessel Register application form at any time, but the application must be received by the Regional Administrator at least seven days before the first day of the next licensing period to avoid the potential lapse of the registration and license between licensing periods.

(c) *VMS unit installation.* A VMS unit required under this section must be installed by a person authorized by the Administrator. A list of Administrator-authorized VMS unit installers may be obtained from the Regional Administrator or the Administrator.

(d) *Hardware and software specifications.* The VMS unit installed and carried on board a vessel to comply with the requirements of this section must consist of hardware and software that is approved by the Administrator and approved by NMFS. A current list of hardware and software approved by the Administrator may be obtained from the Administrator. A current list of hardware and software approved by NMFS may be obtained from NMFS.

(e) *Service activation.* Other than when in port or in a shipyard and having given proper notification to the Administrator as specified in paragraph (g) of this section, the owner or operator of a vessel licensed under §300.32 must, when the vessel is in the Treaty Area:

(1) Activate the VMS unit on board the licensed vessel to transmit automatic position reports;

(2) Ensure that no person interrupts, interferes with, or impedes the operation of the VMS unit or tampers with, alters, damages, or disables the VMS unit, or attempts any of the same; and

(3) Ensure that no person moves or removes the VMS unit from the installed position without first notifying the Administrator by telephone, fac-

simile, or e-mail of such movement or removal.

(f) *Interruption of VMS unit signal.* When a vessel owner or operator is notified by the Administrator or an authorized officer that automatic position reports are not being received, or the vessel owner or operator is otherwise alerted or aware that transmission of automatic position reports has been interrupted, the vessel owner and operator must comply with the following:

(1) The vessel owner or operator must submit manual position reports that include vessel name, call sign, current position (latitude and longitude to the nearest minute), date, and time to the Administrator by telephone, facsimile, or e-mail at intervals of no greater than eight hours or a shorter interval if and as specified by the Administrator or an authorized officer. The reports must continue to be submitted until the Administrator has confirmed to the vessel owner or operator that the VMS unit is properly transmitting position reports. If the manual position reports cannot be made, the vessel operator or owner must notify the Administrator of such as soon as possible, by any means possible.

(2) If directed by the Administrator or an authorized officer, the vessel operator must immediately stow the fishing gear in the manner described in §300.36, take the vessel directly to a port designated by the Administrator or authorized officer, and notify the Administrator by telephone, facsimile, or e-mail as soon as possible that the vessel is being taken to port with fishing gear stowed.

(g) *Shutdown of VMS unit while in port or in shipyard.* When a vessel is in port and not moving, the VMS unit may be shut down, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in port and of the intended shutdown, and only as long as manual position reports as described in paragraph (f)(1) of this section are submitted to the Administrator at intervals of no greater than 24 hours or a shorter interval if and as specified by the Administrator or an authorized officer. If the VMS unit is shut down while the vessel is in port, the vessel owner or operator must

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notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from port. When the vessel is in a shipyard, the VMS unit may be shut down and the submission of manual position reports is not required, provided that the Administrator has been notified by telephone, facsimile, or e-mail that the vessel is in the shipyard and of the intended VMS unit shutdown. If the VMS unit is shut down while the vessel is in a shipyard, the vessel owner or operator must notify the Administrator by telephone, facsimile, or e-mail as soon as possible after the vessel's departure from the shipyard.

(h) *VMS unit repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have the VMS unit repaired or replaced prior to the vessel's next trip. If the VMS unit is replaced, the new VMS unit must be installed by an Administrator-authorized VMS unit installer, as specified in paragraph (c) of this section. In making such repairs or replacements, conformity with the current requirements must be met before the vessel may lawfully operate under the Treaty.

(i) *Access to data.* As a condition to obtaining a license, holders of vessel licenses issued under § 300.32 must allow the Regional Administrator, an authorized officer, the Administrator or an authorized party officer or designees access to the vessel's position data obtained from the VMS unit at the time of, or after, its transmission to the vendor or receiver.

[72 FR 6154, Feb. 9, 2007, as amended at 75 FR 74648, Dec. 1, 2010]

§ 300.46 Transshipping requirements.

(a) *Applicability.* This section applies to vessels licensed under § 300.32.

(b) Transshipping may only be done at the time and place authorized for transshipment by the Pacific Island Parties, following the notification and request requirements of § 300.34(c)(5).

(c) The operator and each member of the crew of a vessel from which any fish taken in the Licensing Area is transshipped must:

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(1) Allow and assist any person identified as an officer of the Pacific Island Party to:

(i) Have full access to the vessel and any place where such fish is being transshipped and the use of facilities and equipment that the officer may determine is necessary to carry out his or her duties;

(ii) Have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;

(iii) Remove samples;

(iv) Have full access to the vessel's records, including its log and documentation, for the purpose of inspection and copying; and

(v) Gather any other information required to fully monitor the activity without interfering unduly with the lawful operation of the vessel; and

(2) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with any person identified as an officer of the Pacific Island Party in the performance of his or her duties.

(d) Transshipping at sea may only be done:

(1) In a designated area in accordance with such terms and conditions as may be agreed between the operator of the vessel and the Pacific Island Party in whose jurisdiction the transshipment is to take place;

(2) In accordance with the requirements of § 300.34; and

(3) If the catch is transshipped to a carrier vessel duly authorized in accordance with national laws.

[72 FR 6155, Feb. 9, 2007]

Subpart E—Pacific Halibut Fisheries

AUTHORITY: 16 U.S.C. 773–773k.

§ 300.60 Purpose and scope.

This subpart implements the North Pacific Halibut Act of 1982 (Act) and is intended to supplement, not conflict with, the annual fishery management measures adopted by the International Pacific Halibut Commission (Commission) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of

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the Northern Pacific Ocean and Bering Sea (Convention).

§ 300.61 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Convention, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Convention, the definition in this section shall apply.

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a Federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(g)(2) of this part.

Annual combined catch limit, for purposes of commercial and sport fishing in Commission regulatory areas 2C and 3A, means the annual total allowable halibut removals (halibut harvest plus wastage) by persons fishing IFQ and by charter vessel anglers.

Annual commercial catch limit, for purposes of commercial fishing in:

(1) Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

(2) Commission regulatory areas 3B and 4A, means the annual total allowable halibut removals by persons fishing IFQ.

(3) Commission regulatory areas 4B, 4C, 4D, and 4E, means the annual total allowable halibut removals by persons fishing IFQ and CDQ.

Annual guided sport catch limit, for purposes of sport fishing in Commission regulatory areas 2C and 3A, means the annual guided sport allocation minus an area-specific estimate of guided sport halibut wastage.

Area 2A includes all waters off the States of California, Oregon, and Washington.

Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58° 11' 54" N. lat., 136° 38' 24" W. long.) and south and east of a line running 205° true from said light.

Area 3A means all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57° 41' 15" N. latitude, 155° 35' 00" W. longitude) to Cape Ikolik (57° 17' 17" N. lati-

tude, 154° 47' 18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56° 44' 50" N. latitude, 154° 08' 44" W. longitude), then 140° true.

Charter halibut permit means a permit issued by the National Marine Fisheries Service pursuant to § 300.67.

Charter vessel, for purposes of §§ 300.65, 300.66, and 300.67, means a vessel used while providing or receiving sport fishing guide services for halibut, and, for purposes of § 300.63, means a vessel used for hire in recreational (sport) fishing for Pacific halibut, but not including a vessel without a hired operator.

Charter vessel angler, for purposes of §§ 300.65, 300.66, and 300.67, means a person, paying or non-paying, receiving sport fishing guide services for halibut.

Charter vessel fishing trip, for purposes of §§ 300.65, 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel.

Charter vessel guide, for purposes of §§ 300.65, 300.66 and 300.67, means a person who holds an annual sport fishing guide license or registration issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

Charter vessel operator, for purposes of § 300.65, means the person in control of the charter vessel during a charter vessel fishing trip.

Chiniak Bay means all waters bounded by the shoreline and straight lines connecting the coordinates in the order listed:

(1) North from Cape Chiniak (57° 37.22' N. lat., 152° 9.36' W. long.);

(2) To Buoy #1 at Williams Reef (57° 50.36' N. lat., 152° 8.82' W. long.);

(3) To East Cape on Spruce Island (57° 54.89' N. lat., 152° 19.45' W. long.);

(4) To Termination Point on Kodiak Island (57° 51.31' N. lat., 152° 24.01' W. long.); and

(5) Connecting to a line running counterclockwise along the shoreline of Kodiak Island to Cape Chiniak (57° 37.22' N. lat., 152° 9.36' W. long.).

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

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Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

Community charter halibut permit means a permit issued by NMFS to a Community Quota Entity pursuant to § 300.67.

Compensation, for purposes of sport fishing for Pacific halibut in Commission regulatory areas 2C and 3A, means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; for this definition, “benefits” includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait.

Crew member, for purposes of §§ 300.65 and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for anything other than items of significant value.

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including:

(1) The deployment of any amount or component part of setline gear anywhere in the maritime area;

(2) The deployment of longline pot gear as defined in § 679.2 of this title, or component part of that gear in Commission regulatory areas 2C, 3A, 3B, and that portion of Area 4A in the Gulf of Alaska west of Area 3B and east of 170°00' W. long; or

(3) The deployment of pot gear as defined in § 679.2 of this title in Commission regulatory areas 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00' W long.

Fishing period means, for purposes of commercial fishing in Commission regulatory Area 2A, dates and/or hours when fishing for Pacific halibut in Area 2A is allowed.

Fishing period limit means, for purposes of commercial fishing in Commission regulatory Area 2A, the maximum amount of Pacific halibut that may be retained and landed by a vessel during one fishing period in Area 2A.

Fishing week, for purposes of § 300.65(d), means a time period that begins at 0001 hours, A.l.t., Monday morning and ends at 2400 hours, A.l.t., the following Sunday night.

Guided Angler Fish (GAF) means halibut transferred within a year from a Commission regulatory area 2C or 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit, community charter halibut permit, or military charter halibut permit for the corresponding area.

Guided Angler Fish (GAF) permit means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(5)(iii).

Guided Angler Fish (GAF) permit holder means the person identified on a GAF permit.

Halibut harvest means the catching and retaining of any halibut.

Head-on length means a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

Individual Fishing Quota (IFQ), for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the annual commercial catch limit of halibut.

IFQ fishing trip, for purposes of the subpart, means the period beginning when a vessel operator commences harvesting IFQ halibut and ending when the vessel operator lands any species.

IFQ halibut means any halibut that is harvested with setline gear as defined

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in this section or fixed gear as defined in §679.2 of this title while commercial fishing in any IFQ regulatory area defined in §679.2 of this title.

Military charter halibut permit means a permit issued by NMFS to a United States Military Morale, Welfare and Recreation Program pursuant to §300.67.

Overall length of a vessel means the horizontal distance, rounded to the nearest ft/meter, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

Permit means, for purposes of commercial fishing in Commission regulatory Area 2A, a Pacific halibut fishing permit for Area 2A issued by NMFS pursuant to §300.63(f).

Person includes an individual, corporation, firm, or association.

Power hauling means using electrically, hydraulically, or mechanically powered devices or attachments or other assisting devices or attachments to deploy and retrieve fishing gear. Power hauling does not include the use of hand power, a hand powered crank, a fishing rod, a downrigger, or a hand troll gurdy.

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community of Alaska listed at §300.65(g)(1) or an area of Alaska described at §300.65(g)(3) in which the non-commercial, customary, and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary, and traditional use of halibut.

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:

(1) An individual domiciled in a rural community listed in the table at §300.65(g)(1) and who has maintained a domicile in rural communities listed in the table at §300.65(g)(1), or in rural areas described at §300.65(g)(3), for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country; or

(2) An individual domiciled in a rural area described at §300.65(g)(3) and who has maintained a domicile in rural areas described at §300.65(g)(3), or in rural communities listed in the table at §300.65(g)(1), for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means:

(1) In regulatory area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(2) In waters in and off Alaska, all fishing other than commercial fishing and subsistence fishing.

Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member, as defined at §300.61.

Subarea 2A-1 includes the usual and accustomed fishing areas for Pacific Coast treaty tribes off the coast of Washington and all inland marine waters of Washington north of Point Chehalis (46°53.30' N lat.), including Puget Sound. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

Subsistence means, with respect to waters in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

Subsistence halibut registration certificate (SHARC) means documentation, issued by NMFS, of the registration required at §300.65(i).

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Treaty Indian tribes means the Hoh, Jamestown S’Klallam, Lower Elwha S’Klallam, Lummi, Makah, Port Gamble S’Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, Tulalip, and Nooksack tribes.

Valid, with respect to a charter halibut permit for purposes of §§ 300.66 and 300.67, means the charter halibut permit that is currently in effect.

Vessel class means, for purposes of commercial fishing in Commission regulatory Area 2A, a group of vessels within a specific range of overall length (in feet) (46 CFR 69.9), as designated by the letters A–H pursuant to § 300.63(g).

[61 FR 35550, July 5, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 300.61, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 300.62 Annual management measures.

Annual management measures may be added and modified through adoption by the Commission and publication in the FEDERAL REGISTER by the Assistant Administrator, with immediate regulatory effect. Such measures may include, *inter alia*, provisions governing: Licensing of vessels, inseason actions, regulatory areas, fishing periods, closed periods, closed areas, catch limits (quotas), fishing period limits, size limits, careful release of halibut, vessel clearances, logs, receipt and possession of halibut, fishing gear, retention of tagged halibut, supervision of unloading and weighing, and sport fishing for halibut. The Assistant Administrator will publish the Commission’s regulations setting forth annual management measures in the FEDERAL REGISTER by March 15 each year. Annual management measures may be added just during inseason by the Commission.

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) *General provisions.* (1) Under 16 U.S.C. 773c, a fishery management council may develop regulations governing the domestic halibut fishery that do not conflict with the regulations set by the International Pacific

Halibut Commission. NMFS may approve and implement such regulations. The Pacific Fishery Management Council has developed a catch sharing plan that provides a framework for allocation of Pacific halibut for Area 2A and sets management measures for fisheries in Area 2A. NMFS implements annual management measures consistent with the catch sharing plan through annual rules published in the FEDERAL REGISTER. Long term provisions included in and necessary to implement the catch sharing plan are included in the sections that follow.

(2) A portion of the Area 2A non-tribal commercial allocation is allocated as incidental catch in the salmon troll fishery in Area 2A pursuant to § 300.62. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings and will be promulgated in the annual salmon management measures described at 660 Subpart H. This fishery will occur between dates and times listed in the annual management measures as described at § 300.62, until there is not sufficient allocation and the season is closed by NMFS.

(3) A portion of the Area 2A Washington recreational (sport) allocation is allocated pursuant to § 300.62 as incidental catch in the sablefish primary fishery north of 46°53.30’ N lat. (Pt. Chehalis, Washington), which is regulated under § 660.231. This fishing opportunity is only available in years in which the Washington recreational allocation is 214,110 lb (97.1 mt) or greater, provided that a minimum of 10,000 lb (4.5 mt) is available to the sablefish fishery. Each year that this fishing opportunity is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the FEDERAL REGISTER. This fishery will occur between dates and times listed in annual management measures as described under § 300.62, until there is not sufficient allocation and the season is closed by NMFS.

(i) In years when the incidental catch of halibut in the sablefish primary fishery north of 46°53.30’ N lat. is allowed,

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it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess a permit issued pursuant to paragraph (d) of this section.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30' N lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

(4) The treaty Indian fishery is governed by §300.64 and tribal regulations. The annual allocation for the fishery will be announced with the annual management measures as described under §300.62.

(b) *Non-Tribal fishery election in Area 2A.* (1) A non-tribal vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The recreational (sport) fishery as established in the annual domestic management measures issued pursuant to §300.62 and paragraph c of this subsection;

(ii) The non-tribal commercial directed fishery for halibut established in the annual domestic management measures issued pursuant to §300.62 and paragraph (e) of this section and/or the incidental retention of halibut during the sablefish primary fishery described at §660.231; or

(iii) Incidental catch of halibut during the salmon troll fishery as authorized in the annual domestic management measures issued pursuant to §300.62 and 50 CFR part 660, subpart H.

(2) No person shall fish for halibut in the recreational (sport) fishery in Area 2A from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A, or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for incidental catch of halibut during the salmon troll fishery.

(4) No person shall fish for halibut in the non-tribal directed commercial

halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational (sport) halibut fishery in Area 2A or that is permitted for the recreational (sport) charter halibut fishery in Area 2A pursuant to paragraph (d) of this section.

(5) No person shall retain halibut incidentally caught in the salmon troll fishery in Area 2A taken on a vessel that, during the same calendar year, has been used in the recreational (sport) halibut fishery in Area 2A, or that is permitted for the recreational (sport) charter halibut fishery in Area 2A pursuant to paragraph (d) of this section.

(6) No person shall retain halibut incidentally caught in the salmon troll fishery in Area 2A taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is permitted to participate in these commercial fisheries pursuant to paragraph (d) of this section.

(c) *Recreational (sport) halibut fisheries in Area 2A*—(1) *Annual Recreational Fishery Rule.* Each year, NMFS will publish a rule to govern the annual recreational (sport) fisheries for the following year and will seek public comment. The rule will include annual management measures, such as annual fishing dates and allocations for each subarea within Area 2A. The subareas are defined in paragraph (c)(5) of this section. Annual management measures may be adjusted inseason by NMFS under paragraph (c)(6) of this section.

(2) *Port of landing.* Any halibut landed into a port counts toward the allocation for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch.

(3) *Automatic closure of recreational fisheries.* NMFS shall determine once an area or subarea has attained or is projected to attain its area or subarea allocation, and will take automatic action to close the fishery, via announcement in the FEDERAL REGISTER and concurrent notification on the NMFS

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hotline at (206) 526-6667 or (800) 662-9825 and the NOAA Fisheries website. Closures will be determined without prior notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously taken into account. Once the effective date of the closure is announced in the FEDERAL REGISTER, no person shall land, possess, or retain halibut in that area or subarea.

(4) *Groundfish fisheries.* Vessels that participate in federal recreational groundfish fisheries, including those that fish for and retain halibut, are also governed by regulations at 50 CFR 660.360.

(5) *Recreational Fishery Subareas—(i) Washington.* The Washington recreational fishery is divided into the following subareas:

(A) *Washington Puget Sound and the U.S. Convention waters in the Strait of Juan de Fuca.* The Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca subarea is located east of a line extending from 48°17.30' N lat., 124°23.70' W long., north to 48°24.10' N lat., 124°23.70' W long.

(B) *Washington North Coast Subarea.* The Washington North Coast subarea is located west of a line at approximately 124°23.70' W long. and north of the Queets River (47°31.70' N lat.).

(1) Recreational fishing for halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(b).

(2) [Reserved]

(C) *Washington South Coast Subarea.* The Washington South Coast subarea is located between the Queets River, WA (47°31.70' N lat.), and Leadbetter Point, WA (46°38.17' N lat.).

(1) This subarea is divided between the all-depth fishery (the Washington

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South Coast primary fishery) and the incidental nearshore fishery in the area from 47°31.70' N to 46°58.00' N lat. and east of a boundary line approximating the 30-fm (55-m) depth contour. The Washington South coast northern nearshore area is defined by straight lines connecting the following points in the order stated:

TABLE 1 TO PARAGRAPH (c)(5)(i)(C)(1)

Point	N lat.	W long.
1	47°31.70'	124°37.03'
2	47°25.67'	124°34.79'
3	47°12.82'	124°29.12'
4	46°58.00'	124°24.24'

(2) Recreational fishing for halibut is allowed within the South Coast Recreational YRCA and Westport Offshore Recreational YRCA. The South Coast Recreational YRCA is defined at 50 CFR 660.70(e). The Westport Offshore Recreational YRCA is defined at 50 CFR 660.70(f).

(D) *Columbia River Subarea.* The Columbia River subarea is located between Leadbetter Point, WA (46°38.17' N lat.), and Cape Falcon, OR (45°46.00' N lat.).

(1) The nearshore fishery extends from Leadbetter Point (46°38.17' N lat., 124°15.88' W long.) to the Columbia River (46°16.00' N lat., 124°15.88' W long.) by connecting the following coordinates in Washington: 46°38.17' N lat., 124°15.88' W long., 46°16.00' N lat., 124°15.88' W long., and connecting to the boundary line approximating the 40-fm (73-m) depth contour in Oregon as defined at 50 CFR 660.71(o). The remaining area in the Columbia River subarea is the all-depth fishery.

(2) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, yellowtail rockfish, widow rockfish, canary rockfish, redstripe rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, blue/deacon rockfish, and lingcod caught north of the Washington-Oregon border (46°16.00' N lat.) may be retained when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360, during days open to the all-depth Pacific halibut fishery.

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(3) Long-leader gear (as defined at 50 CFR 660.351) may be used to retain groundfish during the all-depth Pacific halibut fishery south of the Washington-Oregon border, when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360.

(ii) *Oregon*. The Oregon recreational fishery is divided into the following subareas:

(A) *Oregon Central Coast Subarea*. The Oregon Central Coast Subarea is located between Cape Falcon (45°46.00' N lat.) and Humbug Mountain (42°40.50' N lat.).

(1) The nearshore fishery (the "inside 40-fm" fishery) occurs shoreward of the boundary line approximating the 40-fm (73-m) depth contour between 45°46.00' N lat. and 42°40.50' N lat. is defined at 50 CFR 660.71(o).

(2) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, when halibut are on board the vessel, sablefish, Pacific cod, other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed with long-leader gear (as defined at 50 CFR 660.351), when allowed by groundfish regulations at 50 CFR 660.360. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed, or landed if halibut are onboard the vessel. During days only open to nearshore halibut fishing, flatfish species may not be taken and retained seaward of the 40-fm (73-m) depth contour if halibut are on board the vessel.

(3) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, as defined at 50 CFR 660.71(o), halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(4) Recreational fishing for halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess

any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut onboard. The Stonewall Bank YRCA is defined at 50 CFR 660.70(g) through (i).

(B) *Southern Oregon Subarea*. The Southern Oregon Subarea is located south of Humbug Mountain, Oregon (42°40.50' N lat.) to the Oregon/California Border (42°00.00' N lat.).

(1) During the recreational halibut all-depth fishery, when the groundfish fishery is restricted by depth and halibut are onboard the vessel, sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab) may be retained, possessed, or landed, and yellowtail rockfish, widow rockfish, canary rockfish, redstriped rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, and blue/deacon rockfish may be taken and retained, possessed or landed, when caught with long-leader gear (as defined at 50 CFR 660.351).

(2) [Reserved]

(iii) *California Coast Subarea*. The California Coast Subarea is located south of the Oregon/California Border (42°00.00' N lat.) and along the California coast.

(6) *Inseason Management for Recreational (Sport) Halibut Fisheries in Area 2A*. (i) The Regional Administrator, NMFS West Coast Region, after consultation with the Pacific Fishery Management Council, the Commission, and the affected state(s), may modify regulations during the season after making the following determinations:

(A) The action is necessary to allow allocation objectives to be met.

(B) The action will not result in exceeding the allocation for the area.

(C) If any of the recreational (sport) fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective allocations, NMFS may take inseason action to transfer any projected unused allocation to another Washington recreational subarea.

(D) If any of the recreational (sport) fishery subareas south of Leadbetter Point, Washington, are not projected to utilize their respective allocations by their season ending dates, NMFS may take inseason action to transfer any projected unused allocation to another Oregon sport subarea.

(E) If the total estimated yelloweye rockfish bycatch mortality from recreational halibut trips in all Oregon subareas is projected to exceed 22 percent of the annual Oregon recreational yelloweye rockfish harvest guideline, NMFS may take inseason action to reduce yelloweye rockfish bycatch mortality in the halibut fishery while allowing allocation objectives to be met to the extent possible.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of recreational (sport) fishing periods;

(B) Modification of recreational (sport) fishing bag limits;

(C) Modification of recreational (sport) fishing size limits;

(D) Modification of recreational (sport) fishing days per calendar week;

(E) Modification of subarea allocation; and

(F) Modification of the Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) restrictions off Oregon using YRCA expansions as defined in groundfish regulations at 50 CFR 660.70(g) or (h).

(iii) *Notice procedures.* Actions taken under this section will be published in the FEDERAL REGISTER. Notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, at 206–526–6667 or 800–662–9825.

(iv) *Effective dates.* (A) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the FEDERAL REGISTER. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the FEDERAL REGISTER.

(C) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect

beyond the end of the calendar year in which it is issued.

(d) *Pacific Halibut Permits for IPHC Regulatory Area 2A—(1) General.* (i) This section applies to persons and vessels that fish for Pacific halibut, or land and retain Pacific halibut, in IPHC Regulatory Area 2A. No person shall fish for Pacific halibut from a vessel, nor land or retain Pacific halibut on board a vessel, used either for commercial fishing or as a recreational charter vessel in IPHC regulatory area 2A, unless the NMFS West Coast Region has issued a permit valid for fishing in IPHC regulatory area 2A for that vessel.

(ii) A permit issued for a vessel operating in the Pacific halibut fishery in IPHC Regulatory Area 2A shall be valid for one of the following, per paragraph (b) of this section:

(A) The incidental catch of Pacific halibut during the salmon troll fishery specified in paragraph (a)(2) of this section;

(B) The incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (a)(3) of this section;

(C) The non-tribal directed commercial fishery during the fishing periods specified in paragraph (e)(1) of this section;

(D) Both the incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (a)(3) of this section and the non-tribal directed commercial fishery during the fishing periods specified in paragraph (e)(1) of this section; or

(E) The recreational charter fishery.

(iii) A permit issued under this paragraph (d) is valid only for the vessel for which it is registered. A change in ownership, documentation, or name of the registered vessel, or transfer of the ownership of the registered vessel will render the permit invalid.

(iv) A vessel owner must contact NMFS if the vessel for which the permit is issued is sold, ownership of the vessel is transferred, the vessel is renamed, or any other reason for which the documentation of the vessel is changed as the change would invalidate the current permit. A new permit application is required if there is a change in any documentation of the

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vessel. To submit a new permit application, follow the procedures outlined under paragraph (d)(2) of this section. If the documentation of the vessel is changed after the deadline to apply for a permit has passed as described at paragraph (d)(2)(ii) of this section, the vessel owner may contact NMFS and provide information on the reason for the documentation change and all permit application information described at paragraph (d)(2) of this section. NMFS may issue a permit, or decline to issue a permit and the applicant may appeal per paragraph (d)(3) of this section.

(v) A permit issued under this paragraph (d) must be carried on board that vessel at all times and the vessel operator shall allow its inspection by any authorized officer. The format of this permit may be electronic or paper.

(vi) No individual may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

(vii) A permit issued under this paragraph (d) is valid only during the calendar year (January 1–December 31) for which it was issued.

(viii) NMFS may suspend, revoke, or modify any permit issued under this section under policies and procedures in title 15 CFR part 904, or other applicable regulations in this chapter.

(2) *Applications*—(i) *Application form*. To obtain a permit, an individual must submit a complete permit application to the NMFS West Coast Region Sustainable Fisheries Division (NMFS) through the NOAA Fisheries Pacific halibut permits web page at <https://www.fisheries.noaa.gov/permit/pacific-halibut-permits>. A complete application consists of:

(A) An application form that contains valid responses for all data fields, including information and signatures.

(B) A current copy of the U.S. Coast Guard Documentation Form or state registration form or current marine survey.

(C) Payment of required fees as discussed in paragraph (d)(2)(iv) of this section.

(D) Additional documentation NMFS may require as it deems necessary to

make a determination on the application.

(ii) *Deadlines*. (A) Applications for permits for the directed commercial fishery in Area 2A must be received by NMFS no later than 2359 PST on February 15, or by 2359 PST the next business day in February if February 15 is a Saturday, Sunday, or Federal holiday.

(B) Applications for permits that allow for incidental catch of Pacific halibut during the salmon troll fishery or the sablefish primary fishery in Area 2A must be received by NMFS no later than 2359 PST March 1, or by 2359 PST the next business day in March if March 1 is a Saturday, Sunday, or Federal holiday.

(C) Applications for permits for recreational charter vessels, which allow for catch of Pacific halibut during the recreational fishery, must be received a minimum of 15 days before intending to participate in the fishery, to allow for processing the permit application.

(iii) *Application review and approval*. NMFS shall issue a vessel permit upon receipt of a completed permit application submitted on the NOAA Fisheries website no later than the day before the start date of the fishery the applicant selected. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (d)(3) of this section. NMFS will decline to act on a permit application that is incomplete or if the vessel or vessel owner is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D.

(iv) *Permit fees*. The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. Full payment of the fee is required at the time a permit application is submitted.

(3) *Appeals.* In cases where the applicant disagrees with NMFS' decision on a permit application, the applicant may appeal that decision to the Regional Administrator. This paragraph (d)(3) describes the procedures for appealing the IAD on permit actions made in this title under this subpart.

(i) *Who may appeal?* Only an individual who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such individual will be referred to as the "permit applicant."

(ii) *Appeal process.* (A) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal. The permit applicant may request an informal hearing on the appeal.

(B) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE, Seattle, WA 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(C) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, and may request additional information to allow action on the appeal.

(D) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(E) If a hearing is requested, or if the Regional Administrator determines

that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(F) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(iii) *Timing of appeals.* (A) For permits issued under this paragraph (d), if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 60 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 60 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(iv) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the permit applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if

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a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(v) *Status of permits pending appeal.*

(A) For all permit actions, the permit registration remains as it was prior to the request until the final decision has been made.

(B) [Reserved]

(e) *Non-tribal directed commercial fishery management.* Each year a portion of Area 2A's overall fishery limit is allocated consistent with the Pacific Fishery Management Council's Catch Sharing Plan to the non-tribal directed commercial fishery and published pursuant to §300.62. The non-tribal directed commercial fishery takes place in the area south of Point Chehalis, WA (46°53.30' N lat.).

(1) *Management measures.* Annually, NMFS will determine and publish in the FEDERAL REGISTER annual management measures for the upcoming fishing year for the non-tribal directed commercial fishery. This will include dates and lengths for the fishing periods for the Area 2A non-tribal directed commercial fishery, as well as the associated fishing period limits.

(i) *Fishing periods.* NMFS will determine the fishing periods, *e.g.*, dates and/or hours that permittees may legally harvest halibut in Area 2A, on an annual basis. This determination will take into account any recommendations provided by the Pacific Fishery Management Council and comments received by the public during the public comment period on the proposed annual management measures rule. The intent of these fishing periods is to ensure the Area 2A Pacific halibut directed commercial allocation is achieved but not exceeded.

(ii) *Fishing period limits.* NMFS will establish fishing period limits, *e.g.*, the maximum amount of Pacific halibut that a vessel may retain and land during a specific fishing period, and assign those limits according to vessel class for each fishing period. Fishing period limits may be different across vessel classes (except as described in paragraph (e)(1)(iii) of this section). NMFS will determine fishing period limits following the considerations listed in paragraph (e)(1)(ii)(A) of this section.

The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while attempting to provide fair and equitable access across fishery participants to an attainable amount of harvest. The limits will be published in annual management measures rules in the FEDERAL REGISTER along with a description of the considerations used to determine them.

(A) *Considerations.* When determining fishing period(s) and associated fishing period limits for the directed commercial fishery, NMFS will consider the following factors:

(1) The directed commercial fishery allocation;

(2) Vessel class;

(3) Number of fishery permit applicants and projected number of participants per vessel class;

(4) The average catch of vessels compared to past fishing period limits;

(5) Other relevant factors.

(B) *Vessel classes.* Vessel classes are based on overall length (defined at 46 CFR 69.9) shown in the following table:

TABLE 2 TO PARAGRAPH (e)(1)(ii)(B)

Overall length (in feet)	Vessel class
1-25	A
26-30	B
31-35	C
36-40	D
41-45	E
46-50	F
51-55	G
56+	H

(iii) *Inseason action to add fishing periods and associated fishing period limits.* Fishing periods in addition to those originally implemented at the start of the fishing year may be warranted in order to provide the fishery with opportunity to achieve the Area 2A directed commercial fishery allocation, if performance of the fishery during the initial fishing period(s) is different than expected and the directed commercial allocation is not attained through the initial period(s). If NMFS makes the determination that sufficient allocation remains to warrant additional fishing period(s) without exceeding the allocation for the Area 2A directed commercial fishery, the additional

fishing period(s) and fishing period limits may be added during the fishing year. If NMFS determines fishing period(s) in addition to those included in an annual management measures rule is warranted, NMFS will set the fishing period limits equal across all vessel classes. The fishing period(s) and associated fishing period limit(s) will be announced in the FEDERAL REGISTER and concurrent publication on the hotline. If the amount of directed commercial allocation remaining is determined to be insufficient for an additional fishing period, the allocation is considered to be taken and the fishery will be closed, as described at paragraph (e)(2) of this section.

(2) *Automatic closure of the non-tribal directed commercial fishery.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously been taken into account.

(i) If NMFS determines that the non-tribal directed commercial fishery has attained its annual allocation or is projected to attain its allocation if additional fishing was to be allowed, the Regional Administrator will take automatic action to close the fishery, via announcement in the FEDERAL REGISTER and concurrent notification on the telephone hotline at 206-526-6667 or 800-662-9825.

(ii) [Reserved]

(f) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* (1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside a closed area, known as the nontrawl Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N lat. Between the U.S./Canada border and 46°16' N lat., the eastern boundary of the nontrawl RCA, is the shoreline. Between 46°16' N lat. and 40°10' N lat., the nontrawl RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between the U.S./Canada border and 40°10' N lat., the nontrawl RCA is defined

along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

(2) Vessels that incidentally catch halibut while fishing in the sablefish primary fishery are required to follow area closures and gear restrictions defined in the groundfish regulations. It is unlawful to retain, possess or land halibut with limited entry fixed gear within the North Coast Commercial Yelloweye Rockfish Conservation Area as defined at 50 CFR 660.230. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70.

(3) Vessels that incidentally catch halibut while fishing in the salmon troll fishery are required to follow area and gear restrictions defined in the groundfish regulations at 50 CFR 660.330. It is unlawful for a commercial salmon troll vessel to retain, possess, or land halibut within the Salmon Troll YRCA with salmon troll gear. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.70, and in salmon regulations at 50 CFR 660.405.

[88 FR 21506, Apr. 11, 2023]

§ 300.64 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A-1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A-1 with hook-and-line gear in conformance with the season and quota established annually by the Commission.

(c) Commercial fishing periods and management measures to implement paragraph (b) of this section will be established by treaty Indian tribal regulations.

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission's management measures governing size limits, careful release of halibut, logs, receipt and possession, and fishing gear (published pursuant to § 300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

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(e) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A-1 is permitted with hook-and-line gear from January 1 to December 31.

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (b) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) Any member of a U.S. treaty Indian tribe who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington* 384 F. Supp. 312 (W.D. Wash., 1974).

(i) Table 1 to this paragraph (i) sets forth the fishing areas of each of the 13 treaty Indian tribes fishing pursuant to this section. Within subarea 2A-1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TABLE 1 TO PARAGRAPH (i)

Tribe	Boundaries
HOH	The area between 47°54.30' N lat. (Quillayute River) and 47°21.00' N lat. (Quinault River) and east of 125°44.00' W long.
JAMESTOWN S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
LOWER ELWHA S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
LUMMI	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89-08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
MAKAH	The area north of 48°02.25' N lat. (Norwegian Memorial) and east of 125°44.00' W long.
NOOKSACK	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.
PORT GAMBLE S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
QUILEUTE	The area commencing at Cape Alava, located at 48°10'00" N lat., 124°43'56.9" W long.; then proceeding west approximately 40 nautical miles at that latitude to a northwestern point located at 48°10'00" N lat., 125°44'00" W long.; then proceeding in a southeasterly direction mirroring the coastline at a distance no farther than 40 nautical miles from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at 47°31'42" N lat., 125°20'26" W long.; then proceeding east along that line of latitude to the Pacific coast shoreline at 47°31'42" N lat., 124°21'9.0" W long.
QUINAULT	The area commencing at the Pacific coast shoreline near Destruction Island, located at 47°40'06" N lat., 124°23'51.362" W long.; then proceeding west approximately 30 nautical miles at that latitude to a northwestern point located at 47°40'06" N lat., 125°08'30" W long.; then proceeding in a southeasterly direction mirroring the coastline no farther than 30 nautical miles from the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at 46°53'18" N lat., 124°53'53" W long.; then proceeding east along that line of latitude to the Pacific coast shoreline at 46°53'18" N lat., 124°7'36.6" W long.
SKOKOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

TABLE 1 TO PARAGRAPH (i)—Continued

Tribe	Boundaries
SUQUAMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
SWINOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
TULALIP	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

[61 FR 35550, July 5, 1996, as amended at 74 FR 11697, Mar. 19, 2009; 76 FR 14319, Mar. 16, 2011; 81 FR 18795, Apr. 1, 2016; 85 FR 25324, May 1, 2020]

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual commercial catch limit among Areas 4C, 4D, and 4E and will be adopted by the Commission as annual management measures and published in the FEDERAL REGISTER as required in § 300.62.

(c) *Catch sharing plan (CSP) for Commission Regulatory Areas 2C and 3A*—(1) *General*. The catch sharing plan for Commission regulatory areas 2C and 3A:

(i) Allocates the annual combined catch limit for Commission regulatory areas 2C and 3A in order to establish the annual commercial catch limit and the annual guided sport catch limit for the halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section; and

(ii) Authorizes the use of Commission regulatory areas 2C and 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(5) of this section.

(iii) Authorizes the use of Commission regulatory areas 2C and 3A RFQ

resulting from halibut QS held by the RQE as authorized in part 679 to this title to supplement the annual guided sport catch limit in the corresponding area, pursuant to paragraph (c)(4) of this section.

(2) *Implementation*. The Commission regulatory areas 2C and 3A CSP annual combined catch limits, annual commercial catch limits, and annual guided sport catch limits are adopted by the Commission as annual management measures and published by NMFS in the FEDERAL REGISTER as required in § 300.62.

(3) *Annual commercial catch limits*. (i) The Commission regulatory areas 2C and 3A annual commercial catch limits are determined by subtracting wastage from the allocations in Tables 1 and 2 of this subpart E, adopted by the Commission as annual management measures, and published in the FEDERAL REGISTER as required in § 300.62.

(ii) Commercial fishing in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 679, subparts A, B, D, and E.

(4) *Annual guided sport catch limits*. (i) The Commission regulatory areas 2C and 3A annual guided sport catch limits are determined by subtracting wastage from, and adding any pounds of RFQ held by an RQE for that area to, the allocations in Tables 3 and 4 of this subpart, adopted by the Commission as annual management measures, and

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published in the FEDERAL REGISTER as required in §300.62.

(ii) Sport fishing by charter vessel anglers in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 300, subparts A and E.

(iii) The amount of QS held by the RQE for Commission regulatory area 2C and 3A as of October 1 each year will be the basis for determining the amount of RFQ pounds that will be added to the annual guided sport catch limit for the corresponding area in the upcoming year.

(5) *Guided Angler Fish (GAF)*. This paragraph (§300.65(c)(5)) governs the transfer of Commission regulatory areas 2C and 3A halibut between individual fishing quota (IFQ) and guided angler fish (GAF), the issuance of GAF permits, and GAF use.

(i) *General*. (A) GAF is derived from halibut IFQ that is transferred from a Commission regulatory area 2C or 3A IFQ permit holder's account held by a person who also holds quota share (QS), as defined in §679.2 of this title, to a GAF permit holder's account for the same regulatory area.

(B) A GAF permit authorizes a charter vessel angler to retain GAF that are caught in the Commission regulatory area specified on a GAF permit:

(1) During the sport halibut fishing season adopted by the Commission as annual management measures and published in the FEDERAL REGISTER as required in §300.62, and

(2) Subject to the GAF use restrictions at paragraphs (c)(5)(iv)(A) through (K) of this section.

(C) NMFS will return unharvested GAF to the IFQ permit holder's account from which the GAF were derived on or after fifteen calendar days prior to the closing of the commercial halibut fishing season each year, subject to paragraph (c)(5)(ii) of this section and underage provisions at §679.40(e) of this title.

(ii) *Transfer Between IFQ and GAF*—(A) *General*. A transfer between IFQ and GAF means any transaction in which halibut IFQ passes between an IFQ permit holder and a GAF permit holder as:

(1) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in §679.2 of this title, are transferred from a Commission regulatory area 2C or 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to a GAF permit holder's account in the same management area;

(2) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit holder's account in Commission regulatory area 2C or 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to the same IFQ permit holder's account from which the GAF were derived; or

(3) The return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, on or after 15 calendar days prior to the closing of the commercial halibut fishing season.

(B) *Transfer procedure*—(1) *Application for Transfer Between IFQ and GAF*. A transfer between IFQ and GAF requires Regional Administrator review and approval of a complete Application for Transfer Between IFQ and GAF. Both the transferor and the transferee are required to complete and sign the application. Transfers will be conducted via methods approved by NMFS. The Regional Administrator shall provide an Application for Transfer Between IFQ and GAF on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/ram/default.htm>. An Application for Transfer Between IFQ and GAF is not required for the return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, 15 calendar days prior to the closing of the commercial halibut fishing season for that year.

(2) *Application timing*. The Regional Administrator will not approve any Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after one month prior to the closing of the commercial fishing season for that year. Applications to transfer GAF to IFQ will be accepted from August 1 through August 31 only.

(3) *Transfer due to court order, operation of law, or as part of a security agreement.* NMFS may approve an Application for Transfer Between IFQ and GAF to return GAF to the IFQ permit holder's account from which it derived pursuant to a court order, operation of law, or a security agreement.

(4) *Notification of decision on application.* (i) Persons who submit an Application for Transfer Between IFQ and GAF to the Regional Administrator will receive notification of the Regional Administrator's decision to approve or disapprove the application for transfer.

(ii) If an Application for Transfer Between IFQ and GAF is disapproved, NMFS will provide the reason(s) in writing by mail, posted on the date of that decision.

(iii) Disapproval of an Application for Transfer Between IFQ and GAF may be appealed pursuant to §679.43 of this title.

(iv) The Regional Administrator will not approve a transfer between IFQ and GAF on an interim basis if an applicant appeals a disapproval of an Application for Transfer Between IFQ and GAF pursuant to §679.43 of this title.

(5) *IFQ and GAF accounts.* (i) Accounts affected by either a Regional Administrator-approved Application for Transfer Between IFQ and GAF or the return of unharvested GAF to IFQ on or after 15 calendar days prior to the closing of the commercial halibut fishing season for that year will be adjusted on the date of approval or return. Applications for Transfer Between IFQ and GAF that are transfers of GAF to IFQ that have been approved by the Regional Administrator will be completed not earlier than September 1. Any necessary permits will be sent with the notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

(ii) Upon approval of an Application for Transfer Between IFQ and GAF for an initial transfer from IFQ to GAF, NMFS will establish a new GAF account for the GAF applicant's account and issue the resulting new GAF and IFQ permits. If a GAF account already exists from a previous transfer from the same IFQ account in the cor-

responding management area in that year, NMFS will modify the GAF recipient's GAF account and the IFQ transferor's permit account and issue modified GAF and IFQ permits upon approval of an Application for Transfer Between IFQ and GAF.

(iii) On or after 15 calendar days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit holder's account back into IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E)(2) of this section, and return the resulting IFQ equivalent pounds to the IFQ permit holder's account from which the GAF were derived, unless prevented by regulations at 15 CFR part 904.

(C) *Complete application.* Applicants must submit a completed Application for Transfer Between IFQ and GAF to the Regional Administrator as instructed on the application. NMFS will notify applicants with incomplete applications of the specific information necessary to complete the application.

(D) *Application for Transfer Between IFQ and GAF approval criteria.* An Application for Transfer Between IFQ and GAF will not be approved until the Regional Administrator has determined that:

(1) The person applying to transfer IFQ to GAF or receive IFQ from a transfer of GAF to IFQ:

(i) Possesses at least one unit of halibut quota share (QS), as defined in §679.2 of this title, in the applicable Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested;

(ii) Has been issued an annual IFQ Permit, as defined in §679.4(d)(1) of this title, for the Commission regulatory area corresponding to the person's QS holding, either Area 2C or Area 3A, resulting from that halibut QS; and

(iii) Has an IFQ permit holder's account with an IFQ amount equal to or greater than amount of IFQ to be transferred in the Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested.

(iv) In the applicable Commission regulatory area, either Area 2C or Area 3A, the sum of IFQ halibut equivalent pounds, as defined in §679.2 of this

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title, from the transfer of IFQ to GAF and the pounds of RFQ issued to the RQE during a calendar year does not exceed an amount that is greater than the amount derived from: 5,947,740 units of Area 2C QS, or 22,187,161 units of Area 3A QS.

(2) The person applying to receive or transfer GAF possesses a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the Commission regulatory area (Area 2C or Area 3A) that corresponds to the IFQ permit area from or to which the IFQ will be transferred.

(3) For a transfer of IFQ to GAF:

(i) The transfer between IFQ and GAF must not cause the GAF permit issued to exceed the GAF use limits in paragraphs (c)(5)(iv)(H)(I) and (2) of this section;

(ii) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(5)(iv)(H)(3) of this section; and

(iii) There must be no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit.

(4) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, submits a "Community Quota Entity Application for Transfer Between Individual Fishing Quota (IFQ) and Guided Angler Fish (GAF)," the application will not be approved until the Regional Administrator has determined that:

(i) The CQE applying to transfer IFQ to GAF is eligible to hold IFQ on behalf of the eligible community in Commission regulatory area 2C or 3A designated in Table 21 to 50 CFR part 679;

(ii) The CQE applying to transfer IFQ to GAF has received notification of approval of eligibility to receive IFQ for that community as described in § 679.41(d)(1) of this title;

(iii) The CQE applying to receive GAF from a Commission regulatory area 2C or 3A IFQ permit holder holds one or more charter halibut permits or community charter halibut permits for the corresponding area; and

(iv) The CQE applying to transfer between IFQ and GAF has submitted a

complete annual report(s) as required by § 679.5(t) of this title.

(E) *Conversion between IFQ and GAF—*

(1) *General.* An annual conversion factor will be calculated to convert between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A. This conversion factor will be posted on the NMFS Alaska Region Web site before the beginning of each commercial halibut fishing season.

(2) *Conversion calculation.* The net pounds of IFQ transferred to or from an IFQ permit holder in Commission regulatory area 2C or 3A will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder in the corresponding area, multiplied by the estimated average net weight determined as follows. For the first calendar year after the effective date of this rule, the average net weight will be estimated for all halibut harvested by charter vessel anglers during the most recent year without a size limit in effect. After the first calendar year after the effective date of this rule, the average net weight will be estimated from the average length of GAF retained in that area during the previous year as reported to RAM via the GAF electronic reporting system. If no GAF were harvested in a year, the conversion factor will be calculated using the same method as for the first calendar year after the effective date of this rule. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is:

IFQ net pounds = (number of GAF × average net weight).

(3) The total number of net pounds converted from unharvested GAF and transferred to the IFQ permit holder's account from which it derived cannot exceed the total number of net pounds NMFS transferred from the IFQ permit holder's account to the GAF permit holder's account for that area in the current year.

(iii) *Guided Angler Fish (GAF) permit—*

(A) *General.* (1) A GAF permit authorizes a charter vessel angler to catch

and retain GAF in the specified Commission regulatory area, subject to the limits in paragraphs (c)(5)(iv)(A) through (K) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that is designated on the GAF permit.

(2) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area from the time of permit issuance until any of the following occurs:

(i) The amount of GAF in the GAF permit holder's account is zero;

(ii) The permit expires at 11:59 p.m. (Alaska local time) on the day prior to 15 days prior to the end of the commercial halibut fishing season for that year;

(iii) NMFS replaces the GAF permit with a modified GAF permit following NMFS approval of an Application for Transfer Between IFQ and GAF; or

(iv) The GAF permit is revoked or suspended under 15 CFR part 904.

(3) A GAF permit is issued for use in a Commission regulatory area (2C or 3A) to the person who holds a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the corresponding Commission regulatory area. Regulations governing issuance, transfer, and use of charter halibut permits are located in § 300.67.

(4) A GAF permit is assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit held by the GAF permit holder in the corresponding Commission regulatory area (2C or 3A).

(5) If a charter vessel angler harvests GAF from a charter vessel with a charter vessel guide on board, a legible copy of a valid GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried by the charter vessel operator on board the charter vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized offi-

cer. If a charter vessel angler harvests GAF from a charter vessel without a charter vessel guide on board, the charter vessel guide must retain the legible copy of the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit must be on the charter vessel with the charter vessel angler.

(6) No person may alter, erase, mutilate, or forge a GAF permit or document issued under this section (§ 300.65(c)(5)(iii)). Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(7) GAF permit holders must retain GAF permit(s) and associated GAF permit logs for two years after the end of the fishing year for which the GAF permit(s) was issued and make the GAF permit available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(B) *Issuance.* The Regional Administrator will issue a GAF permit upon approval of an Application to Transfer Between IFQ and GAF.

(C) *Transfer.* GAF authorized by a GAF permit under this paragraph (§ 300.65(c)(5)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(5)(ii) of this section.

(iv) *GAF use restrictions.* (A) If a charter vessel angler harvests GAF from a charter vessel with a charter vessel guide on board, the charter vessel guide must have on board a legible copy of a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest. If a charter vessel angler harvests GAF from a charter vessel without a charter vessel guide on board, the legible copy of the valid GAF permit must be on board the same vessel as the charter vessel guide, and the original charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest must be on the charter vessel with the charter vessel angler.

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(B) The total number of GAF on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest.

(C) The total number of halibut retained by a charter vessel angler harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest adopted by the Commission as annual management measures and published in the FEDERAL REGISTER as required in §300.62.

(D) Retained GAF are not subject to any length limit implemented by the Commission's annual management measures and published in the FEDERAL REGISTER as required in §300.62, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements adopted by the Commission as annual management measures and published in the FEDERAL REGISTER as required in §300.62.

(F) The charter vessel guide must ensure that each charter vessel angler complies with paragraphs (c)(5)(iv)(A) through (E) of this section.

(G) The charter vessel guide must be physically present when the GAF halibut is harvested and must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF. If the GAF halibut is filleted, the entire carcass, with head and tail connected as a single piece, must be retained on board the charter vessel on which the halibut was caught until all fillets are offloaded.

(H) Except as provided in paragraph (c)(5)(iv)(I) of this section, during the halibut sport fishing season adopted by the Commission as annual management measures and published in the FEDERAL REGISTER as required in §300.62, the following GAF use and IFQ transfer limits shall apply. GAF use limits do not apply to military charter halibut permits.

(I) No more than 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers in a year,

(2) No more than 600 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers in a year; and

(3) In Commission regulatory area 2C, a maximum of 1,500 pounds or ten (10) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. In Commission regulatory area 3A, a maximum of 1,500 pounds or fifteen (15) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. Start year fishable pounds is the sum of IFQ equivalent pounds, as defined in §679.2 of this title, for an area, derived from QS held, plus or minus adjustments made to that amount pursuant to §679.40(d) and (e) of this title.

(I) The halibut QS equivalent of net pounds of halibut IFQ that is transferred to GAF is included in the computation of halibut QS use caps in §679.42(f)(1)(i) and (ii) of this title.

(J) A CHP holder receiving GAF from a CQE is subject to §679.42(f)(6) of this title. For a CHP holder who receives GAF from a CQE, the net poundage equivalent of all halibut IFQ received as GAF is included in the computation of that person's IFQ halibut holdings in §679.42(f)(6) of this title.

(K) Applicability of GAF use restrictions to CQEs. The GAF use restrictions in paragraph (c)(5)(iv)(H) of this section do not apply if:

(1) A CQE transfers IFQ as GAF to a GAF permit that is assigned to one or more charter halibut permits held by that CQE or community charter halibut permits held by that CQE;

(2) A CQE transfers IFQ as GAF to another CQE holding one or more charter halibut permits or community charter halibut permits; or

(3) A CQE transfers IFQ as GAF to a GAF permit that is assigned to a charter halibut permit held by an eligible community resident (as defined at §679.2) of that CQE community, as defined for purposes of the Catch Sharing Plan for Commission regulatory areas 2C and 3A in §679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Commission regulatory area 2C and 3A—(1) General requirements—(i) Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The person whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Retention and inspection of logbook.* A person who is required to provide information pursuant to paragraph (d)(4) of this section, or whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook and whose charter vessel anglers retain halibut is required to:

(i) Retain all logbook data pages showing halibut harvest for 2 years after the end of the fishing year for which the logbook was issued, and

(ii) Make the logbook available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A.* A charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A, except that charter vessel operators who are charter vessel anglers may

catch and retain halibut during a charter vessel fishing trip if the charter vessel guide is on a separate charter vessel.

(4) *Recordkeeping and reporting requirements in Commission regulatory area 2C and 3A—(i) General requirements.* Each charter vessel angler and charter vessel guide in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(iii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified.

(ii) *Logbook reporting requirements—(A) Charter vessel angler signature requirement.* Each charter vessel angler who retains halibut caught in Commission regulatory area 2C or 3A must acknowledge that his or her name, license number (if required), and number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Charter Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(1) through (10) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

(1) *Guide license number.* The Alaska Department of Fish and Game sport fishing guide license or registration number held by the charter vessel guide who certified the logbook data sheet.

(2) *Date.* Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips are taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip. A separate logbook sheet is required if more than one charter halibut permit is used on a trip.

(3) *Charter halibut permit (CHP) number.* The NMFS CHP number(s) authorizing charter vessel anglers on that

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charter vessel fishing trip to catch and retain halibut.

(4) *Guided Angler Fish (GAF) permit number.* The NMFS GAF permit number(s) authorizing charter vessel anglers on that charter vessel fishing trip to harvest GAF.

(5) *Statistical area.* The primary Alaska Department of Fish and Game statistical area code in which halibut were caught and retained.

(6) *Angler sport fishing license number and printed name.* Before a charter vessel fishing trip begins, record the first and last name of each paying or non-paying charter vessel angler on board that will fish for halibut. For each angler required to be licensed, record the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number. For youth anglers not required to be licensed, record the word "youth" in place of the license number.

(7) *Number of halibut retained.* For each charter vessel angler, record the total number of non-GAF halibut caught and kept.

(8) *Number of GAF retained.* For each charter vessel angler, record the total number of GAF kept.

(9) *Guide signature.* The charter vessel guide acknowledges that the recorded information is correct by signing the logbook data sheet.

(10) *Angler signature.* The charter vessel guide is responsible for ensuring that charter vessel anglers that retain halibut comply with the signature requirements at paragraph (d)(4)(ii)(A) of this section.

(iii) *GAF reporting requirements—(A) General.* (1) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit log (on the back of the GAF permit) the date that the fish was caught and retained and the total length of that fish as described in paragraphs (d)(4)(iii)(D)(5) and (7) of this section. If GAF halibut are retained on a charter vessel without a charter vessel guide on board, the charter vessel guide must also comply with the reporting requirements in paragraph (d)(4)(iii)(A)(5) of this section.

(2) In addition to the recordkeeping and reporting requirements in para-

graphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at <http://alaskafisheries.noaa.gov/> to submit a GAF landings report.

(3) A GAF permit holder must submit a GAF landings report by 11:59 p.m. (Alaska local time) on the last calendar day of a fishing trip for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

(4) If a GAF permit holder is unable to submit a GAF landings report due to hardware, software, or Internet failure for a period longer than the required reporting time, or a correction must be made to information already submitted, the GAF permit holder must contact NOAA Office of Law Enforcement, Juneau, AK, at 800-304-4846 (Select Option 1).

(5) If a GAF is retained on a charter vessel without a charter vessel guide on board, the charter vessel guide must immediately record in the ADF&G Saltwater Charter Logbook the GAF permit number under which GAF were caught and retained, and the number of GAF kept under the corresponding charter vessel angler's name.

(B) *Electronic Reporting of GAF.* A GAF permit holder must obtain, at his or her own expense, the technology to submit GAF landing reports to the NMFS-approved reporting system for GAF landings.

(C) *NMFS-Approved Electronic Reporting System.* The GAF permit holder agrees to the following terms (see paragraphs (d)(4)(iii)(C)(1) through (3) of this section):

(1) To use any NMFS online service or reporting system only for authorized purposes;

(2) To safeguard the NMFS Person Identification Number and password to prevent their use by unauthorized persons; and

(3) To accept the responsibility of and acknowledge compliance with § 300.4(a) and (b), § 300.65(d), and § 300.66(p) and (q).

(D) *Information entered for each GAF caught and retained.* The GAF permit holder must enter the following information for each charter vessel fishing trip in which GAF were retained under

the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(1) through (9) of this section) by 11:59 p.m. (Alaska local time) on the last day of a charter fishing trip in which a charter vessel angler retained GAF:

(1) Logbook number from the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook.

(2) Vessel identification number for vessel on which GAF were caught and retained:

(i) State of Alaska issued boat registration (AK number), or

(ii) U.S. Coast Guard documentation number.

(3) GAF permit number under which GAF were caught and retained.

(4) Alaska Department of Fish and Game sport fishing guide license or registration number held by the charter vessel guide who certified the logbook data sheet.

(5) Date that GAF was caught and retained.

(6) Number of GAF caught and retained.

(7) Length of each GAF caught and retained. Halibut lengths are measured in inches in a straight line from the anterior-most tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

(8) Community charter halibut permit only: Community or Port where the charter vessel fishing trip began (*i.e.*, where charter vessel anglers boarded the vessel).

(9) Community charter halibut permit only: Community or Port where the charter vessel fishing trip ended (*i.e.*, where charter vessel anglers or fish were offloaded from the vessel).

(E) *Properly reported landing.* (1) The GAF permit holder is responsible for ensuring that all GAF harvested on board a vessel are debited from the GAF permit holder's account under which the GAF were retained.

(2) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded by the GAF permit holder on the GAF permit log used to record the dates and lengths of retained GAF, as required in paragraph (d)(4)(iii)(A)(1) of this sec-

tion, constitutes confirmation that the GAF permit holder's GAF landing is properly reported and the GAF permit holder's account is properly debited.

(3) Instructions for correcting a submitted GAF landing electronic report are at (d)(4)(iii)(A)(4) of this section.

(5) *Carcass retention requirement for size-restricted halibut.* If a size-restricted halibut is filleted on board the charter vessel, the entire carcass, with head and tail connected as a single piece, must be retained on board the charter vessel on which it was caught until all fillets are offloaded.

(6) If a charter vessel angler catches and retains halibut, and that halibut is on board a fishing vessel with halibut caught and retained by persons who are not charter vessel anglers, then the daily bag limit, possession limit, size limit, and carcass retention regulations applicable to charter vessel anglers shall apply to all halibut on board the fishing vessel.

(e) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (See Figure 1 to subpart E):

(i) With respect to paragraph (e)(2) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) By a line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 56°59'54" N. lat., 135°51'27" W. long. to Vasilief Rock at 56°48'56" N. lat., 135°32'30" W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(ii) With respect to paragraphs (e)(3), (e)(4), and (e)(5) of this section, that part of the Commission Regulatory Area 2C that is enclosed on the north and east:

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(A) By a line from Kruzof Island at 57°20'30" N. lat., 135°45'10" W. long. to Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) A line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59'23" N. lat., 135°49'34" W. long., to Hanus Point at 56°51'55" N. lat., 135°30'30" W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (e)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel shall engage in sport fishing, as defined at §300.61, for halibut within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at §300.61, for other species, within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (e)(4) and (e)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in §300.61, for other species within Sitka Sound, as defined in paragraph

(e)(1)(ii) of this section, from June 1 through August 31.

(5) Setline gear may not be used in a 4 nm radius extending south from Low Island at 57°00.70' N. lat., 135°36.57' W. long. within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

(f) Sitka Pinnacles Marine Reserve. (1) For purposes of this paragraph (f), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5' N lat., 135°54.0' W long;
56°57.0' N lat., 135°54.0' W long;
56°57.0' N lat., 135°57.0' W long;
56°55.5' N lat., 135°57.0' W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at §300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(g) *Subsistence fishing in and off Alaska.* No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (g)(1), (g)(2), or (g)(3) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Rural Community	Organized Entity
Angoon	Municipality
Coffman Cove	Municipality
Craig	Municipality
Edna Bay	Census Designated Place
Elfin Cove	Census Designated Place
Gustavus	Census Designated Place
Haines	Municipality
Hollis	Census Designated Place
Hoonah	Municipality
Hydaburg	Municipality
Hyder	Census Designated Place
Kake	Municipality
Kasaan	Municipality
Klawock	Municipality
Klukwan	Census Designated Place
Metlakatla	Census Designated Place
Meyers Chuck	Census Designated Place
Naukati	Municipality
Pelican	Municipality
Petersburg	Municipality
Point Baker	Census Designated Place
Port Alexander	Municipality
Port Protection	Census Designated Place

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HALIBUT REGULATORY AREA 2C—Continued

Rural Community	Organized Entity
Saxman	Municipality
Sitka	Municipality
Skagway	Municipality
Tenakee Springs	Municipality
Thorne Bay	Municipality
Whale Pass	Census Designated Place
Wrangell	Municipality

HALIBUT REGULATORY AREA 3A

Rural Community	Organized Entity
Akhik	Municipality
Chenega Bay	Census Designated Place
Cordova	Municipality
Karluk	Census Designated Place
Kodiak City	Municipality
Larsen Bay	Municipality
Nanwalek	Census Designated Place
Old Harbor	Municipality
Ouzinkie	Municipality
Port Graham	Census Designated Place
Port Lions	Municipality
Seldovia	Municipality
Tatitlek	Census Designated Place
Yakutat	Municipality

HALIBUT REGULATORY AREA 3B

Rural Community	Organized Entity
Chignik Bay	Municipality
Chignik Lagoon	Census Designated Place
Chignik Lake	Census Designated Place
Cold Bay	Municipality
False Pass	Municipality
Ivanof Bay	Census Designated Place
King Cove	Municipality
Nelson Lagoon	Census Designated Place
Perryville	Census Designated Place
Sand Point	Municipality

HALIBUT REGULATORY AREA 4A

Rural Community	Organized Entity
Akutan	Municipality
Nikolski	Census Designated Place
Unalaska	Municipality

HALIBUT REGULATORY AREA 4B

Rural Community	Organized Entity
Adak	Census Designated Place
Atka	Municipality

HALIBUT REGULATORY AREA 4C

Rural Community	Organized Entity
St. George	Municipality
St. Paul	Municipality

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HALIBUT REGULATORY AREA 4D

Rural Community	Organized Entity
Gambell	Municipality
Savoonga	Municipality
Diomed (Inalik)	Municipality

HALIBUT REGULATORY AREA 4E

Rural Community	Organized Entity
Alakanuk	Municipality
Aleknegik	Municipality
Bethel	Municipality
Brevig Mission	Municipality
Chefornak	Municipality
Chevak	Municipality
Clark's Point	Municipality
Council	Census Designated Place
Dillingham	Municipality
Eek	Municipality
Egegik	Municipality
Elim	Municipality
Emmonak	Municipality
Golovin	Municipality
Goodnews Bay	Municipality
Hooper Bay	Municipality
King Salmon	Census Designated Place
Kipnuk	Census Designated Place
Kongiganak	Census Designated Place
Kotlik	Municipality
Koyuk	Municipality
Kwigillingok	Census Designated Place
Levelock	Census Designated Place
Manokotak	Municipality
Mekoryak	Municipality
Naknek	Census Designated Place
Napakia	Municipality
Napaskiak	Municipality
Newtok	Census Designated Place
Nightmute	Municipality
Nome	Municipality
Oscarville	Census Designated Place
Pilot Point	Municipality
Platinum	Municipality
Port Heiden	Municipality
Quinhagak	Municipality
Scammon Bay	Municipality
Shaktoolik	Municipality
Sheldon Point (Nunam Iqua)	Municipality
Shishmaref	Municipality
Solomon	Census Designated Place
South Naknek	Census Designated Place
St. Michael	Municipality
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

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HALIBUT REGULATORY AREA 2C

Place with Tribal Head-quarters	Organized Tribal Entity
Angoon	Angoon Community Association
Craig	Craig Community Association
Haines	Chilkoot Indian Association
Hoonah	Hoonah Indian Association
Hydaburg	Hydaburg Cooperative Association
Juneau	Aukquan Traditional Council Central Council Tlingit and Haida Indian Tribes Douglas Indian Association
Kake	Organized Village of Kake
Kasaan	Organized Village of Kasaan
Ketchikan	Ketchikan Indian Corporation
Klawock	Klawock Cooperative Association
Klukwan	Chilkat Indian Village
Metlakatla	Metlakatla Indian Community, Annette Island Reserve
Petersburg	Petersburg Indian Association
Saxman	Organized Village of Saxman
Sitka	Sitka Tribe of Alaska
Skagway	Skagway Village
Wrangell	Wrangell Cooperative Association

HALIBUT REGULATORY AREA 3A

Place with Tribal Head-quarters	Organized Tribal Entity
Akhiok	Native Village of Akhiok
Chenega Bay	Native Village of Chanega
Cordova	Native Village of Eyak
Karluk	Native Village of Karluk
Kenai-Soldotna	Kenaitze Indian Tribe Village of Salamatoff
Kodiak City	Lesnoi Village (Woody Island) Native Village of Afognak Shoonaq' Tribe of Kodiak
Larsen Bay	Native Village of Larsen Bay
Nanwalek	Native Village of Nanwalek
Ninilchik	Ninilchik Village
Old Harbor	Village of Old Harbor
Ouzinkie	Native Village of Ouzinkie
Port Graham	Native Village of Port Graham
Port Lions	Native Village of Port Lions
Seldovia	Seldovia Village Tribe
Tatitlek	Native Village of Tatitlek
Wasilla	Village of Kanatak
Yakutat	Yakutat Tlingit Tribe

HALIBUT REGULATORY AREA 3B

Place with Tribal Head-quarters	Organized Tribal Entity
Chignik Bay	Native Village of Chignik
Chignik Lagoon	Native Village of Chignik Lagoon
Chignik Lake	Chignik Lake Village
False Pass	Native Village of False Pass
Ivanoff Bay	Ivanoff Bay Village
King Cove	Agdaagux Tribe of King Cove Native Village of Belkofski
Nelson Lagoon	Native Village of Nelson Lagoon
Perryville	Native Village of Perryville
Sand Point	Pauloff Harbor Village Native Village of Unga Qagan Tayagungin Tribe of Sand Point Village

HALIBUT REGULATORY AREA 4A

Place with Tribal Head-quarters	Organized Tribal Entity
Akutan	Native Village of Akutan
Nikolski	Native Village of Nikolski
Unalaska	Qawalingin Tribe of Unalaska

HALIBUT REGULATORY AREA 4B

Place with Tribal Head-quarters	Organized Tribal Entity
Atka	Native Village of Atka

HALIBUT REGULATORY AREA 4C

Place with Tribal Head-quarters	Organized Tribal Entity
St. George	Pribilof Islands Aleut Commu-
St. Paul	nities of St. Paul Island and St. George Island

HALIBUT REGULATORY AREA 4D

Place with Tribal Head-quarters	Organized Tribal Entity
Gambell	Native Village of Gambell
Savoonga	Native Village of Savoonga
Diomed (Inalik)	Native Village of Diomed (Inalik)

HALIBUT REGULATORY AREA 4E

Place with Tribal Head-quarters	Organized Tribal Entity
Alakanuk	Village of Alakanuk
Aleknagik	Native Village of Aleknagik
Bethel	Orutsararmut Native Village
Brevig Mission	Native Village of Brevig Mission
Chefornak	Village of Chefornak
Chevak	Chevak Native Village
Clark's Point	Village of Clark's Point
Council	Native Village of Council
Dillingham	Native Village of Dillingham
Eek	Native Village of Eek
Egegik	Egegik Village
Elim	Native Village of Elim
Emmonak	Chuloonawick Native Village Emmonak Village
Golovin	Chinik Eskimo Community
Goodnews Bay	Native Village of Goodnews Bay
Hooper Bay	Native Village of Hooper Bay Native Village of Paimiut
King Salmon	King Salmon Tribal Council
Kipnuk	Native Village of Kipnuk
Kongiganak	Native Village of Kongiganak
Kotlik	Native Village of Hamilton Village of Bill Moore's Slough Village of Kotlik
Koyuk	Native Village of Koyuk
Kwigillingok	Native Village of Kwigillingok
Levelock	Levelock Village
Manokotak	Manokotak Village
Mekoryak	Native Village of Mekoryak
Naknek	Naknek Native Village

HALIBUT REGULATORY AREA 4E—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Napakiaik	Native Village of Napakiaik
Napaskiak	Native Village of Napaskiak
Newtok	Newtok Village
Nightmute	Native Village of Nightmute
	Umkumiute Native Village
Nome	King Island Native Community
	Nome Eskimo Community
Oscarville	Oscarville Traditional Village
Pilot Point	Native Village of Pilot Point
Platinum	Platinum Traditional Village
Port Heiden	Native Village of Port Heiden
Quinhagak	Native Village of Kwinhagak
Scammon Bay	Native Village of Scammon Bay
Shaktolik	Native Village of Shaktolik
Sheldon Point (Nunam Iqua)	Native Village of Sheldon's Point
Shishmaref	Native Village of Shishmaref
Solomon	Village of Solomon
South Naknek	South Naknek Village
St. Michael	Native Village of Saint Michael
Stebbins	Stebbins Community Associa- tion
Teller	Native Village of Mary's Igloo
	Native Village of Teller
Togiak	Traditional Village of Togiak
Toksook Bay	Native Village of Toksook Bay
Tuntutuliak	Native Village of Tuntutuliak
Tununak	Native Village of Tununak
Twin Hills	Twin Hills Village
Ugashik	Ugashik Village
Unalakleet	Native Village of Unalakleet
Wales	Native Village of Wales
White Mountain	Native Village of White Moun- tain

(3) A person is eligible to harvest subsistence halibut if he or she is a rural resident in one of the rural areas of Alaska described as follows:

(i) Southeast Alaska east of 141° W. long., except for the land areas of the Ketchikan Gateway Borough as described at paragraph (g)(4)(i) of this section, the land areas of the City and Borough of Juneau, and the Ketchikan and Juneau non-subsistence marine waters areas as defined in paragraphs (h)(3)(i) and (h)(3)(ii) of this section (see figures 2 and 3 to this subpart E).

(ii) The Alaska Peninsula, Aleutian Islands, Kodiak Island Archipelago, and the area south of the northern boundary of the Bristol Bay Borough and south of 58°39.2' N. lat. (see figures 5, 6, and 7 to this subpart E).

(iii) Nelson, Nunivak, and Saint Lawrence Islands (see figure 6 to this subpart E).

(iv) All other areas of Alaska within ten statute miles of mean high water on the Bering Sea and Pacific Ocean coasts, south of Cape Espenberg, including along the Kuskokwim River to

Bethel, and that are not specified as non-rural land or water areas as defined in paragraph (g)(4) of this section (see figures 4, 5, 6, and 7 to this subpart E).

(4) Non-rural areas consist of the non-subsistence marine waters areas defined in paragraph (h)(3) of this section and the land areas of the following cities and boroughs for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska:

(i) The Ketchikan Gateway Borough on May 18, 2008. This area encompasses all those islands bounded on the east, north, and west by Behm Canal, Behm Narrows, and Clarence Strait to its junction with Nichols Passage, and on the south by Nichols and Revillagigedo Channel to its junction with Behm Canal. The designated boundaries extend to the center line of Behm Canal, Behm Narrows, Clarence Strait, Nichols Passage, and Revillagigedo Channel, and include all the area of Revillagigedo, Gravina, Pennock, Betton, Grant and other Clover Passage and Naha Bay Islands, Hassler, Gedney, Black, Smeaton, Manzanita, Rudyerd, and Bold Islands, and all other offshore and adjacent islands and inlets thereto (see figure 2 to this subpart E).

(ii) The City and Borough of Juneau (see figure 3 to this subpart E).

(iii) The Greater Anchorage Area Borough (see figures 4 and 5 to this subpart E).

(iv) The Matanuska-Susitna Borough (see figure 5 to this subpart E).

(v) The Kenai Peninsula Borough excluding the area of the Seldovia Census Designated Place, the area south and west of that place, and the area south and west of a line that runs from 59°27.5' N. lat., 151°31.7' W. long. to 59°12.5' N. lat., 151°18.5' W. long. (see figure 5 to this subpart E).

(vi) The City of Valdez (see figures 4 and 5 to this subpart E).

(h) *Limitations on subsistence fishing.* Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (g) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (i) of this section, provided that such fishing is

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consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear, including longline, handline, rod and reel, spear, jig and hand-troll gear.

(i) Subsistence fishing gear set or retrieved from a vessel while engaged in subsistence fishing for halibut must not have more than the allowable number of hooks per vessel, or per person registered in accordance with paragraph (i) of this section and aboard the vessel, whichever is less, according to the regulatory area and permit type indicated in the following table:

Regulatory Area	Permit Type	Gear Restrictions
2C—Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas	SHARC	30 hooks per vessel
	Ceremonial Permit	30 hooks per vessel
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
2C—Sitka Sound	SHARC	September 1 through May 31: 30 hooks per vessel
		June 1 through August 31: 15 hooks per vessel; no power hauling
	Ceremonial Permit	September 1 through May 31: 30 hooks per vessel
		June 1 through August 31: fishing under Ceremonial Permit not allowed
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
2C—Ketchikan and Juneau non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed

Regulatory Area	Permit Type	Gear Restrictions
	Ceremonial Permit	30 hooks per vessel
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3A—Except Chiniak Bay, and Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	30 hooks per person onboard up to 90 hooks per vessel
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
3A—Chiniak Bay	SHARC	30 hooks per person onboard up to 60 hooks per vessel
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
3A—Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel

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Regulatory Area	Permit Type	Gear Restrictions
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3B	SHARC	30 hooks per person onboard up to 90 hooks per vessel
4A and 4B	SHARC	30 hooks per person onboard up to 90 hooks per vessel
4C, 4D, and 4E	SHARC	no hook limit

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this section shall be marked with the following: first initial, last name, and address (street, city, and state), followed by the letter “S” to indicate that it is used to harvest subsistence halibut.

(iii) Markings on setline marker buoys shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The retention of subsistence halibut is limited per person eligible to conduct subsistence fishing for halibut and onboard the vessel according to the following table:

Regulatory Area	Permit Type	Retention Limits
2C—Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas	SHARC	20 halibut per day per vessel and in possession
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	no daily or possession limit
2C—Sitka Sound	SHARC	September 1 through May 31: 10 halibut per day per vessel and in possession

Regulatory Area	Permit Type	Retention Limits
		June 1 through August 31: 5 halibut per day per vessel and in possession
	Ceremonial Permit	September 1 through May 31: 25 halibut per permit
		June 1 through August 31: fishing under Ceremonial Permit not allowed
	Educational Permit	25 halibut per permit
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
2C—Ketchikan and Juneau non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3A—including Chiniak Bay, but excluding Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	20 halibut per person per day and in possession
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	no daily or possession limit
3A—Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	fishing under Community Harvest Permit not allowed

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Regulatory Area	Permit Type	Retention Limits
3B	SHARC	20 halibut per person per day and in possession
4A and 4B	SHARC	20 halibut per person per day; no possession limit
4C, 4D, and 4E	SHARC	no daily or possession limit

(3) Subsistence fishing may be conducted in any waters in and off Alaska except in the four non-subsistence marine waters areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 2 to subpart E) is defined as those waters between a line from Caamano Point at 55°29.90' N. lat., 131°58.25' W. long. to Point Higgins at 55°27.42' N. lat., 131°50.00' W. long. and a point at 55°11.78' N. lat., 131°05.13' W. long., located on Point Sykes to a point at 55°12.22' N. lat., 131°05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55°11.54' N. lat., 131°11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132°07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55°02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 3 to subpart E) is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57°50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Seginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58°43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58°03.42' N. lat.), and east of a line from Point Couverden at 58°11.38' N. lat., 135°03.40' W. long., to Point Augusta at 58°02.38' N. lat., 134°57.11' W. long.;

(iii) *The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A* (see figures 4, 5, 6, and 7 to this subpart E) is defined as:

(A) All waters of Cook Inlet north of a line extending from the westernmost point of Hesketh Island at 59°30.40' N. lat., except those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61°05.00' N. lat., 151°01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.) (Tyonek subdistrict); and

(B) All waters of Alaska south of 59°30.40' N. lat. on the western shore of Cook Inlet to Cape Douglas (58°51.10' N. lat.) and in the east to Cape Fairfield (148°50.25' W. long.), except those waters of Alaska west of a line from the easternmost point of Jakolof Bay (151°31.90' W. long.), and following the shore to a line extending south from the easternmost point of Rocky Bay (151°18.41' W. long.); and

(iv) *Valdez non-subsistence marine waters area in Commission regulatory area 3A* (see figures 4 and 5 to this subpart E) is defined as the waters of Port Valdez and Valdez Arm located north of 61°01.38' N. lat., and east of 146°43.80' W. long.

(4) Waters in and off Alaska that are not specifically identified as non-subsistence marine waters areas in paragraph (h)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (i) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (g)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (g)(2) of this

section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph (h)(4), “area of tribal membership” means rural areas of the Commission regulatory area under which the Organized Tribal Entity is listed in the tables set out in paragraph (g)(2) of this section, or the Bering Sea closed area adjacent to the rural area in which the Alaska Native tribal headquarters is located.

(i) *Subsistence registration.* A person must register as a subsistence halibut fisher and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who registers according to paragraph (i)(2) of this section and who is qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section.

(2) *Registration.* To register as a subsistence halibut fisherman, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Application forms are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 800-304-4846, Option 2. NMFS will process a SHARC Application for an Alaska Native Tribal Member or a SHARC Application for a Rural Resident provided that an application is completed, with all applicable fields accurately filled-in, and all required additional documentation is submitted. Initial applications for a SHARC must be signed and mailed or faxed to NMFS (see instructions on

form). Renewals may be submitted electronically, mailed, or faxed.

(i) *Non-electronic submittal.* The applicant must sign and date the application certifying that all information is true, correct, and complete. The applicant must submit the paper application as indicated on the application.

(ii) *Electronic submittal.* An individual can submit a SHARC renewal on-line using an application available at the Alaska Region website. By using the SHARC number and date of birth, and by submitting the application form, the applicant certifies that all information is true, correct, and complete.

(3) *Expiration of registration.* Each subsistence halibut registration certificate will be valid only for the period of time specified on the certificate. A person eligible to harvest subsistence halibut under paragraph (g) of this section may renew his or her registration certificate that is expired or will expire within 3 months by following the procedures described in paragraph (i)(2) of this section. A subsistence halibut registration certificate will expire:

(i) 2 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (g)(1) of this section, and

(ii) 4 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (g)(2) of this section.

(j) *Community Harvest Permit (CHP).* An Area 2C or Area 3A community or Alaska Native tribe listed in paragraphs (g)(1) or (g)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. The CHP consists of a harvest log and up to five laminated permit cards. A CHP is a permit subject to regulation under §679.4(a) of this title.

(1) *Qualifications.* (i) NMFS may issue a CHP to any community or Alaska Native tribe that applies according to paragraph (j)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (g) of this section.

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(ii) NMFS will issue a CHP to a community in Area 2C or Area 3A only if:

(A) The applying community is listed as eligible in Area 2C or Area 3A according to paragraph (g)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (g)(2) of this section exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C or Area 3A only if the applying tribe is listed as eligible in Area 2C or Area 3A according to paragraph (g)(2) of this section.

(iv) Eligible communities or Alaska Native tribes may appoint only one CHP Coordinator per community or tribe.

(2) *Application.* A community or Alaska Native tribe may apply for a CHP by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. A complete application must include:

(i) The name of the community or Alaska Native tribe requesting the CHP;

(ii) The full name of the person who is designated as the CHP Coordinator for each community or Alaska Native tribe, the designated CHP Coordinator's mailing address (number and street, city, state, and zip code), community of residence (the rural community or residence from paragraph (g)(1) of this section) or the Alaska Native tribe if applicable (as indicated in paragraph (g)(2) of this section), and the daytime telephone number; and

(iii) Any previously issued CHP harvest logs.

(3) *Restrictions.* Subsistence fishing for halibut under a CHP shall be valid only:

(i) In Area 2C or Area 3A, except that a CHP may not be used:

(A) Within Sitka Sound as defined in paragraph (e)(1)(ii) of this section (see Figure 1 to this subpart E); or

(B) Within the Ketchikan, Juneau, Anchorage-Matsu-Kenai, and Valdez non-subsistence marine waters areas as defined in paragraph (h)(3) of this section (see figures 2, 3, 4, 5, 6, and 7 to this subpart E).

(ii) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) of this section for the same community or Alaska Native tribe listed on the CHP;

(iii) On a single vessel on which a CHP card is present; and

(iv) If subsistence fishing gear set or retrieved from a vessel on which the CHP card is present does not exceed the restrictions of paragraph (h) of this section.

(4) *Expiration of permit.* Each CHP will be valid only for the period of time specified on the permit. A CHP will expire one year from the date of issuance to a community or Alaska Native tribe eligible to harvest halibut under paragraph (g) of this section. A community or Alaska Native tribe eligible to harvest subsistence halibut under paragraph (g) of this section may renew its CHP that is expired or will expire within three months by following the procedures described in paragraph (j)(2) of this section.

(5) *Duties of the CHP coordinator.* Each CHP Coordinator must ensure:

(i) The designated harvesters who may fish under the CHP are identified on the Community Harvest Permit harvest log when the CHP is issued to the designated harvesters;

(ii) The CHP remains in the possession of the CHP Coordinator or other tribal or government authority when not in use and is issued to the designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the CHP are performed.

(6) *Harvest log submission.* Each Community Harvest Permit harvest log must be submitted to NMFS on or before the date of expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (j)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number, date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity (if appropriate); and

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period specified on the permit, and if so, the date harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(k) *Ceremonial Permit or Educational Permit.* An Area 2C or Area 3A Alaska Native tribe that is listed in paragraph (g)(2) of this section may apply for a Ceremonial or Educational Permit, allowing the tribe to harvest up to 25 halibut per permit issued. The Ceremonial and Educational Permits each consist of a harvest log and a single laminated permit card. Ceremonial and Educational Permits are permits subject to regulation under §679.4(a) of this title.

(1) *Qualifications.* (i) NMFS may issue a Ceremonial or Educational Permit to any Alaska Native tribe that completes an application according to paragraph (k)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (g)(2) of this section.

(ii) Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe.

(iii) Eligible educational programs may appoint only one authorized Instructor per Educational Permit.

(2) *Application.* An Alaska Native tribe may apply for a Ceremonial or Educational Permit by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

(i) A complete application must include:

(A) The name of the Alaska Native tribe requesting the Ceremonial or Educational Permit;

(B) The name of the person designated as the Ceremonial Permit Coordinator for each Alaska Native tribe or the name of the person designated as the Instructor for an Educational Permit, the Ceremonial Permit Coordi-

nator or Instructor's mailing address (number and street, city, state, and zip code), and the daytime telephone number;

(C) Any previously issued Ceremonial Permit harvest logs from any expired Ceremonial Permit if applying for a Ceremonial Permit; and

(D) Any previously issued Educational Permit harvest logs from any expired Educational Permit if applying for an Educational Permit.

(ii) NMFS will issue a Ceremonial Permit for the harvest of halibut associated with traditional cultural events only if the application:

(A) Indicates the occasion of cultural or ceremonial significance; and

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iii) NMFS will issue an Educational Permit only if the application:

(A) Includes the name and address of the educational institution or organization;

(B) Includes the instructor's name;

(C) Demonstrates the enrollment of qualified students;

(D) Describes minimum attendance requirements of the educational program; and

(E) Describes standards for the successful completion of the educational program.

(3) *Restrictions.* Subsistence fishing for halibut under Ceremonial or Educational Permits shall be valid only:

(i) In Area 3A, except:

(A) In the Anchorage-Matsu-Kenai non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4, 5, 6, and 7 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

(1) Kenaitze Indian Tribe;

(2) Seldovia Village Tribe;

(3) Ninilchik Village;

(4) Native Village of Port Graham;

(5) Native Village of Nanwalek; and

(6) Village of Salamatoff.

(B) In the Valdez non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figures 4 and 5 to this subpart E), only the Native Village of Tatitlek may use a Ceremonial or Educational permit.

(ii) In Area 2C, except:

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(A) In the Ketchikan non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 2 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

(1) Central Council of Tlingit/Haida Indians;

(2) Ketchikan Indian Corporation; and

(3) Organized Village of Saxman;

(B) In the Juneau non-subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 3 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

(1) Central Council of Tlingit/Haida Indians;

(2) Douglas Indian Association; and

(3) Aukquan Traditional Council.

(C) A Ceremonial Permit may not be used within Sitka Sound from June 1 through August 31;

(iii) On a single vessel on which the Ceremonial or Educational Permit card is present;

(iv) On the vessel on which the instructor is present for Educational Permits;

(v) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) of this section for the same Alaska Native tribe listed on the Ceremonial or Educational Permit, except that students enrolled in an educational program may fish under an Educational Permit without a subsistence halibut registration certificate; and

(vi) If subsistence fishing gear set or retrieved from a vessel on which the Ceremonial or Educational Permit card is present does not exceed the restrictions of paragraph (h) of this section.

(4) *Expiration of permits.* Each Ceremonial or Educational Permit will be valid only for the period of time specified on the permit. Ceremonial and Educational Permits will expire 30 days from the date of issuance to an Alaska Native tribe eligible to harvest halibut under paragraph (g)(2) of this section. A tribe eligible to harvest subsistence halibut under paragraph (g)(2) of this section may apply for additional Ceremonial or Educational Permits at any time.

(5) *Duties of Ceremonial Permit Coordinators and Instructors.* Each Ceremonial Permit Coordinator or Instructor must ensure:

(i) The designated harvesters or students who may fish under the Ceremonial or Educational Permit are identified on the Ceremonial/Educational Permit harvest log when the permit is used;

(ii) The Ceremonial Permit remains in the possession of the Ceremonial Permit Coordinator or other tribal authority when not in use and is issued to designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the Ceremonial or Educational Permit are performed.

(6) *Harvest log submission.* Submission of a Ceremonial or Educational Permit log shall be required upon the expiration of each permit and must be received by Restricted Access Management within 15 days of the expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (k)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number if applicable (students do not need a SHARC), date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity;

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period indicated on the permit, and if so, the date when harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(1) *Appeals.* If Restricted Access Management (RAM) determines that an application is deficient, it will prepare and send an Initial Administrative Determination (IAD) to the applicant. The IAD will indicate the deficiencies

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in the application or any additional provided information. An applicant who receives an IAD may appeal RAM's findings pursuant to §679.43 of this title.

[68 FR 18156, Apr. 15, 2003]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §300.65, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 300.66 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under §§300.63, 300.65, and 300.67.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(e).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(f).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under §300.65(g), possesses a valid subsistence halibut registration certificate pursuant to §300.65(i), and makes this certificate available for inspection by an authorized officer on request, except that students enrolled in a valid educational program and fishing under an Educational Permit issued pursuant to §300.65(k) do not need a subsistence halibut registration certificate.

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(h)(1) and retain more halibut than specified at 50 CFR 300.65(h)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-subsistence marine waters area specified at §300.65(h)(3).

(h) Conduct subsistence fishing for halibut while commercial fishing or sport fishing for halibut, as defined in §300.61, from the same vessel on the

same calendar day, or possess on board a vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, except that persons authorized to conduct subsistence fishing under §300.65(g), and who land their total annual harvest of halibut:

(1) In Commission regulatory Areas 4D or 4E may retain, with harvests of Community Development Quota (CDQ) halibut, subsistence halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to §300.62; or

(2) In Commission regulatory Areas 4C, 4D or 4E may retain, with harvests of CDQ halibut, subsistence halibut harvested in Commission regulatory areas 4C, 4D or 4E that are equal to or greater than the size limit specified in the annual management measures published pursuant to §300.62.

(i) Conduct commercial and sport fishing for halibut, as defined in §300.61, from the same vessel on the same calendar day.

(j) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as indicated on the State of Alaska vessel registration, or the owner's immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person's name pursuant to §300.65(i) and complies with the gear and harvest restrictions found at §300.65(h). For purposes of this paragraph (i), the term "charter vessel" means a vessel that is registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game.

(k) Retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under §300.65(g), and who holds a subsistence halibut registration certificate in the person's name under

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§300.65(i), may be reimbursed for the expense of fishing for subsistence halibut under the following conditions:

(1) Persons who qualify as rural residents under §300.65(g)(1) or (g)(3) and hold a SHARC in the person's name under §300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person's SHARC application; or

(2) Persons who qualify as Alaska Native tribal members under §300.65(g)(2) and hold a SHARC in the person's name under §300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by any Alaska Native tribe, or its members, or residents of the same rural community or by rural residents residing within ten statute miles of the rural location listed on the person's SHARC application.

(l) Retain subsistence halibut harvested under a CHP, Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

(m) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

(n) Exceed any of the harvest or gear limitations specified at §300.65(c)(5) or adopted by the Commission as annual management measures and published in the FEDERAL REGISTER as required in §300.62.

(o) Transfer subsistence halibut to charter vessel anglers.

(p) Fail to comply with the requirements of §§300.65 and 300.67.

(q) Fail to submit or submit inaccurate information on any report, license, catch card, application, or statement required or submitted under §§300.65 and 300.67, or submit inaccurate information to an authorized officer.

(r) Refuse to present valid identification, U.S. Coast Guard operator's license, permit, license, or Alaska Department of Fish and Game Saltwater

Sport Fishing Charter Trip logbook upon the request of an authorized officer.

(s) Be a charter vessel guide with charter vessel anglers on board, or a charter vessel operator if the charter vessel guide is not on board, in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which the charter vessel is operating during a charter vessel fishing trip.

(t) Be a charter vessel guide in Commission regulatory area 2C or 3A with more charter vessel anglers catching and retaining halibut during a charter vessel fishing trip than the total angler endorsement number specified on the charter halibut permit(s) or community charter halibut permit(s) in use for that trip.

(u) Be a charter vessel guide of a charter vessel on which one or more charter vessel anglers are catching and retaining halibut in both Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(v) Be a charter vessel guide or a charter vessel operator during a charter vessel fishing trip in Commission regulatory area 2C or 3A with one or more charter vessel anglers that are catching and retaining halibut without having on board the vessel with the charter vessel anglers a State of Alaska Department of Fish and Game Saltwater Charter Logbook in which the charter vessel guide has specified the following:

(1) The person named on the charter halibut permit or permits being used during that charter vessel fishing trip;

(2) The charter halibut permit or permits number(s) being used during that charter vessel fishing trip; and

(3) The name and State-issued vessel registration (AK number) or U.S. Coast Guard documentation number of the charter vessel.

[68 FR 18156, Apr. 15, 2003, as amended at 70 FR 16754, Apr. 1, 2005; 72 FR 30728, June 4, 2007; 72 FR 67669, Nov. 30, 2007; 73 FR 30524, May 28, 2008; 73 FR 52797, Sept. 11, 2008; 73 FR 54942, Sept. 24, 2008; 74 FR 21228, May 6, 2009; 74 FR 57110, Nov. 4, 2009; 75 FR 600, Jan. 5, 2010; 78 FR 75890, Dec. 12, 2013; 80 FR 35206, June 19, 2015]

§ 300.67 Charter halibut limited access program.

This section establishes limitations on using a vessel on which charter vessel anglers catch and retain Pacific halibut in International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A.

(a) *General permit requirements.* (1) In addition to other applicable permit, licensing, or registration requirements, any charter vessel guide of a charter vessel during a charter vessel fishing trip with one or more charter vessel anglers catching and retaining Pacific halibut on board must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the charter vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must ensure that the charter vessel operator and charter vessel guide of the charter vessel comply with all requirements of §§ 300.65, 300.66, and 300.67.

(2) *Area endorsement.* A charter halibut permit is valid only in the International Pacific Halibut Commission regulatory area for which it is endorsed. Regulatory areas are defined in the annual management measures published pursuant to § 300.62.

(3) *Charter vessel angler endorsement.* A charter halibut permit is valid for up to the maximum number of charter vessel anglers on a single charter vessel for which the charter halibut permit is endorsed.

(4) *Annual registration.* A charter halibut permit holder must register a charter halibut permit with NMFS during the calendar year when it will be used to be valid.

(i) *Application and submittal.* An application for a charter halibut permit annual registration will be made available by NMFS. A completed registration application may be submitted using the NMFS-approved electronic reporting system on the Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>. Completed applications may also be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application.

(ii) *Complete annual registration.* To be complete, a charter halibut permit registration application must have all required fields accurately completed and be signed and dated by the applicant.

(iii) *Denied registration applications.* If NMFS does not approve an annual charter halibut permit registration application, NMFS will inform the applicant of the basis for its disapproval and provide the applicant with a 30-day evidentiary period in which to correct any application deficiencies.

(A) *Initial Administration Determination (IAD).* NMFS will send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS determines there is sufficient reason to deny the application. The IAD will indicate the deficiencies in the application and the deficiencies with the information submitted by the applicant in support of its claim.

(B) *Appeal.* An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to 15 CFR part 906.

(b) *Qualifications for a charter halibut permit.* A charter halibut permit for IPHC regulatory area 2C must be based on meeting participation requirements in area 2C. A charter halibut permit for IPHC regulatory area 3A must be based on meeting participation requirements in area 3A. Qualifications for a charter halibut permit in each area must be determined separately and must not be combined.

(1) NMFS will issue a charter halibut permit to a person who meets the following requirements:

(i) The person applies for a charter halibut permit within the application period specified in the FEDERAL REGISTER and completes the application process pursuant to paragraph (h) of this section.

(ii) The person is the individual or non-individual entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet the minimum participation requirements described in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section for one or more charter halibut permits, unless the person is applying as a successor-in-interest.

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(A) Reported five (5) bottomfish logbook fishing trips or more during one year of the qualifying period; and

(B) Reported five (5) halibut logbook fishing trips or more during the recent participation period.

(iii) If the person is applying as a successor-in-interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that meet the participation requirements described in paragraphs (b)(1)(ii) of this section for one or more charter halibut permits, NMFS will require the following written documentation:

(A) If the applicant is applying on behalf of a deceased individual, the applicant must document that the individual is deceased, that the applicant is the personal representative of the deceased's estate appointed by a court, and that the applicant specifies who, pursuant to the applicant's personal representative duties, should receive the permit(s) for which application is made; or

(B) If the applicant is applying as a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

(iv) If more than one applicant claims that they are the successor-in-interest to a dissolved entity, NMFS will award the permit or permits for which the dissolved entity qualified in the name(s) of the applicants that submitted a timely application and proved that they are a successor-in-interest to the dissolved entity.

(2) Notwithstanding any other provision in this subpart, and except as provided in paragraph (b)(1)(iv) of this section,

(i) One logbook fishing trip shall not be credited to more than one applicant;

(ii) One logbook fishing trip made pursuant to one ADF&G Business Owner License shall not be credited to more than one applicant; and

(iii) Participation by one charter halibut fishing business shall not be allowed to support issuance of permits to more than one applicant.

(3) For purposes of this section, the term "ADF&G Business Owner(s) Li-

cense(s)" includes a "business registration," "sport fish business owner license," "sport fish business license," and "ADF&G business license".

(c) *Number of charter halibut permits.* An applicant that meets the participation requirements in paragraph (b) of this section will be issued the number of charter halibut permits equal to the lesser of the number of permits determined by paragraphs (c)(1) or (c)(2) of this section as follows:

(1) The total number of bottomfish logbook fishing trips made pursuant to the applicant's ADF&G Business License in the applicant-selected year divided by five, and rounded down to a whole number; or

(2) The number of vessels that made the bottomfish logbook fishing trips in the applicant-selected year.

(d) *Designation of transferability.* Each permit issued to an applicant under paragraph (c) of this section will be designated as transferable or non-transferable.

(1) Minimum participation criteria for a transferable permit are described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section as follows:

(i) Reported fifteen (15) bottomfish logbook fishing trips or more from the same vessel during one year of the qualifying period; and

(ii) Reported fifteen (15) halibut logbook fishing trips or more from the same vessel during the recent participation period.

(iii) The vessel used during the recent participation period is not required to be the same vessel used during the qualifying period.

(2) The number of transferable charter halibut permits issued to an applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described in paragraphs (d)(1)(i) or (d)(1)(ii) of this section.

(e) *Angler endorsement.* A charter halibut permit will be endorsed as follows:

(1) The angler endorsement number for the first transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period in that area.

(2) The angler endorsement number for each subsequent transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all transferable permits issued to the applicant are assigned an angler endorsement.

(3) The angler endorsement number for the first non-transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period for a vessel not already used to determine an angler endorsement in that area.

(4) The angler endorsement number for each subsequent non-transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all non-transferable permits issued to the applicant are assigned an angler endorsement.

(5) The angler endorsement number will be four (4) if the greatest number of charter vessel anglers reported on any logbook fishing trip for an area in the qualifying period is less than four (4), or no charter vessel anglers were reported on any of the applicant's logbook fishing trips in the applicant-selected year.

(6) The angler endorsement number will be six (6) on a charter halibut permit issued pursuant to military service under paragraph (g)(3) of this section.

(f) For purposes of this section, the following terms are defined as follows:

(1) *Applicant-selected year* means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant's number of transferable and non-transferable permits.

(2) *Bottomfish logbook fishing trip* means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: The sta-

tistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.

(3) *Halibut logbook fishing trip* means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: The number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.

(4) *Logbook fishing trip* means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip, except that for multi-day trips, the number of trips will be equal to the number of days of the multi-day trip, e.g., a two day trip will be counted as two trips.

(5) *Official charter halibut record* means the information prepared by NMFS on participation in charter halibut fishing in Area 2C and Area 3A that NMFS will use to implement the Charter Halibut Limited Access Program and evaluate applications for charter halibut permits.

(6) *Qualifying period* means the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2004 and 2005.

(7) *Recent participation period* means the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2008.

(g) *Unavoidable circumstance*. Unavoidable circumstance claims must be made pursuant to paragraph (h)(6) of this section, and will be limited to persons who would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance is recognized. This unavoidable circumstance provision cannot be used to upgrade the number of permits issued

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or to change a non-transferable permit to a transferable permit, and is limited to the following circumstances.

(1) *Recent participation period.* An applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;

(ii) The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

(iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period.

(v) If the applicant proves the foregoing (*see* paragraphs (g)(1)(i) through (iv) of this section), the applicant will receive the number of transferable and non-transferable permits and the angler endorsements on these permits that result from the application of criteria in paragraphs (b), (c), (d), (e), and (f) of this section.

(2) *Qualifying period.* An applicant for a charter halibut permit that meets the participation requirement for the recent participation period but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves paragraphs (g)(2)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in at least one year of the qualifying period;

(ii) The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

(iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in at least one year of the qualifying period.

(v) If the applicant proves the foregoing (*see* paragraphs (g)(2)(i) through (iv) of this section), the applicant will receive either:

(A) One non-transferable permit with an angler endorsement of four (4); or

(B) The number of transferable and non-transferable permits, and the angler endorsement on those permits, that result from the logbook fishing trips that the applicant proves likely would have taken by the applicant but for the circumstance that thwarted the applicant's specific intent to operate a charter halibut fishing business in one year of the qualifying period and the applicant did not participate during the other year of the qualifying period.

(3) *Military service.* An applicant for a charter halibut permit that meets the participation requirement in the recent participation period, but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves the following:

(i) The applicant was ordered to report for active duty military service as a member of a branch of the U.S. military, National Guard, or military reserve during the qualifying period; and

(ii) The applicant had a specific intent to operate a charter halibut fishing business that was thwarted by the applicant's order to report for military service.

(iii) The number of transferable and non-transferable charter halibut permit(s) that an applicant may receive under paragraph (g)(3) of this section

will be based on the criteria in paragraph (g)(2)(v)(B) of this section. Angler endorsements on all such charter halibut permits will be pursuant to paragraph (e)(2) of this section.

(h) *Application for a charter halibut permit.* (1) An application period of no less than 60 days will be specified by notice in the FEDERAL REGISTER during which any person may apply for a charter halibut permit. Any application that is submitted by mail and postmarked, or submitted by hand delivery or facsimile, after the last day of the application period will be denied. Electronic submission other than by facsimile will be denied. Applications must be submitted to the address given in the FEDERAL REGISTER notice of the application period.

(2) *Charter halibut permit.* To be complete, a charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicant's knowledge, all statements in the application are true and the applicant complied with all legal requirements for logbook fishing trips in the qualifying period and recent participation period that were reported under the applicant's ADF&G Business Owner Licenses. An application for a charter halibut permit will be made available by NMFS. Completed applications may be submitted by mail, hand delivery, or facsimile at any time during the application period announced in the FEDERAL REGISTER notice of the application period described at paragraph (h)(1) of this section.

(3) *Application procedure.* NMFS will create the official charter halibut record and will accept all application claims that are consistent with the official charter halibut record. If an applicant's claim is not consistent with the official charter halibut record, NMFS will issue non-transferable interim permit(s) for all undisputed permit claims, and will respond to the applicant by letter specifying a 30-day evidentiary period during which the applicant may provide additional information or argument to support the applicant's claim for disputed permit(s). Limits on the 30-day evidentiary period are as follows:

(i) An applicant shall be limited to one 30-day evidentiary period; and

(ii) Additional information received after the 30-day evidentiary period has expired will not be considered for purposes of the initial administrative determination.

(4) After NMFS evaluates the additional information submitted by the applicant during the 30-day evidentiary period, it will take one of the following two actions.

(i) If NMFS determines that the applicant has met its burden of proving that the official charter halibut record is incorrect, NMFS will amend the official charter halibut record and use the official charter halibut record, as amended, to determine whether the applicant is eligible to receive one or more charter halibut permits, the nature of those permits and the angler and area endorsements on those permits; or

(ii) If NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect, NMFS will notify the applicant by an initial administration determination, pursuant to paragraph (h)(5) of this section.

(5) *Initial Administration Determination (IAD).* NMFS will send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect or that other reasons exist to initially deny the application. The IAD will indicate the deficiencies in the application and the deficiencies with the information submitted by the applicant in support of its claim.

(6) *Appeal.* An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to 15 CFR part 906.

(i) If the applicant does not apply for a charter halibut permit within the application period specified in the FEDERAL REGISTER, the applicant will not receive any interim permits pending final agency action on the application.

(ii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, the applicant will receive the number and kind of interim permits

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which are not in dispute, according to the information in the official charter halibut record.

(iii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, but according to the information in the official charter halibut record, the applicant would not be issued any permits, the applicant will receive one interim permit with an angler endorsement of four (4).

(iv) All interim permits will be non-transferable and will expire when NMFS takes final agency action on the application.

(i) *Transfer of a charter halibut permit*—(1) *General*. A transfer of a charter halibut permit is valid only if it is approved by NMFS. NMFS will approve a transfer of a charter halibut permit if the permit to be transferred is a transferable permit issued under paragraph (d)(2) of this section, if a complete transfer application is submitted, and if the transfer application meets the standards for approval in paragraph (i)(2) of this section.

(2) *Standards for approval of transfers*. NMFS will transfer a transferable charter halibut permit to a person designated by the charter halibut permit holder if, at the time of the transfer the following standards are met:

(i) The person designated to receive the transferred permit is a U.S. citizen or a U.S. business with a minimum of 75 percent U.S. ownership;

(ii) The parties to the transfer do not owe NMFS any fines, civil penalties or any other payments;

(iii) The transfer is not inconsistent with any sanctions resulting from Federal fishing violations;

(iv) The transfer will not cause the designated recipient of the permit to exceed the permit limit at paragraph (j) of this section, unless an exception to that limit applies;

(v) The GAF permit is not assigned to a charter halibut permit for which the GAF account contains unharvested GAF, pursuant to § 300.65 (c)(5)(iii)(A)(3) and (4);

(vi) A transfer application is completed and approved by NMFS; and

(vii) The transfer does not violate any other provision in this part.

(3) For purposes of paragraph (i)(2) of this section, a U.S. business with a minimum of 75 percent U.S. ownership means a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity where at least 75 percent of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(4) *Application to transfer a charter halibut permit*. To be complete, a charter halibut permit transfer application must have dated signatures of the applicants, and the applicants must attest that, to the best of the applicants' knowledge, all statements in the application are true. An application to transfer a charter halibut permit will be made available by NMFS. Completed transfer applications may be submitted by mail or hand delivery at any time to the addresses listed on the application. Electronic or facsimile deliveries will not be accepted.

(5) *Denied transfer applications*. If NMFS does not approve a charter halibut permit transfer application, NMFS will inform the applicant of the basis for its disapproval.

(6) *Transfer due to court order, operation of law or as part of a security agreement*. NMFS will transfer a charter halibut permit based on a court order, operation of law or a security agreement, if NMFS determines that a transfer application is complete and the transfer will not violate an eligibility criterion for transfers.

(j) *Charter halibut permit limitations*—

(1) *General*. A person may not own, hold, or control more than five (5) charter halibut permits except as provided by paragraph (j)(4) of this section. NMFS will not approve a transfer application that would result in the applicant that would receive the transferred permit holding more than five (5) charter halibut permits except as provided by paragraph (j)(6) of this section.

(2) *Ten percent ownership criterion*. In determining whether two or more persons are the same person for purposes of paragraph (j)(1) of this section, NMFS will apply the definition of an

“affiliation for the purpose of defining AFA entities” at §679.2 of this title.

(3) A permit will cease to be a valid permit if the permit holder is:

(i) An individual and the individual dies; or

(ii) A non-individual (*e.g.*, corporation or partnership) and dissolves or changes as defined at paragraph (j)(5) of this section.

(iii) A transferable permit may be made valid by transfer to an eligible recipient.

(4) *Exception for initial recipients of permits.* Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may issue more than five (5) charter halibut permits to an initial recipient that meets the requirements described in paragraphs (b), (d), and (e) of this section for more than five (5) charter halibut permits, subject to the following limitations:

(i) This exception applies only to an initial recipient as the recipient exists at the time that it is initially issued the permits;

(ii) If an initial recipient of transferable permit(s) who is an individual dies, the individual’s successor-in-interest may not hold more than five (5) charter halibut permits;

(iii) If an initial recipient permit holder that is a non-individual, such as a corporation or a partnership, dissolves or changes, NMFS will consider the new entity a new permit holder and the new permit holder may not hold more than five (5) charter halibut permits.

(5) For purposes of this paragraph (j), a “change” means:

(i) For an individual, the individual has died, in which case NMFS must be notified within 30 days of the individual’s death; and

(ii) For a non-individual entity, the same as defined at §679.42(j)(4)(i) of this title, in which case the permit holder must notify NMFS within 15 days of the effective date of the change as required at §679.42(j)(5) of this title.

(6) *Exception for transfer of permits.* Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may approve a permit transfer application that would result in the person that would receive the transferred permit(s) holding more than five (5) trans-

ferable charter halibut permits if the parties to the transfer meet the following conditions:

(i) The designated person that would receive the transferred permits does not hold any charter halibut permits;

(ii) All permits that would be transferred are transferable permits;

(iii) The permits that would be transferred are all of the transferable permits that were awarded to an initial recipient who exceeded the permit limitation of five (5) permits; and

(iv) The person transferring its permits also is transferring its entire charter vessel fishing business, including all the assets of that business, to the designated person that would receive the transferred permits.

(k) *Community charter halibut permit—*

(1) *General.* A Community Quota Entity (CQE), as defined in §679.2 of this title, representing an eligible community listed in paragraph (k)(2) of this section, may receive one or more community charter halibut permits. A community charter halibut permit issued to a CQE will be designated for area 2C or area 3A, will be non-transferable, and will have an angler endorsement of six (6).

(2) *Eligible communities.* Each community charter halibut permit issued to a CQE under paragraph (k)(1) of this section will specify the name of an eligible community on the permit. Only the following communities are eligible to receive community charter halibut permits:

(i) For Area 2C: Angoon, Coffman Cove, Edna Bay, Game Creek, Hollis, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Metlakatla, Meyers Chuck, Naukati Bay, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay, Whale Pass.

(ii) For Area 3A: Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lyons, Seldovia, Tatitlek, Tyonek, Yakutat.

(3) *Limitations.* The maximum number of community charter halibut permits that may be issued to a CQE for each eligible community the CQE represents is as follows:

(i) A CQE representing an eligible community or communities in regulatory area 2C may receive a maximum

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of four (4) community charter halibut permits per eligible community designated for Area 2C.

(ii) A CQE representing an eligible community or communities in regulatory area 3A may receive a maximum of seven (7) community charter halibut permits per eligible community designated for Area 3A.

(4) NMFS will not approve a transfer that will cause a CQE representing a community or communities to hold more than the total number of permits described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, per community, including community charter halibut permits granted to the CQE under this paragraph (k) and any charter halibut permits acquired by the CQE by transfer under paragraph (i) of this section.

(i) The maximum number of charter halibut and community charter halibut permits that may be held by a CQE per community represented by the CQE in regulatory area 2C is eight (8).

(ii) The maximum number of charter halibut and community charter halibut permits that may be held by a CQE per community represented by the CQE in regulatory area 3A is fourteen (14).

(5) *Limitation on use of permits.* The following limitations apply to community charter halibut permits issued to a CQE under paragraph (k)(1) of this section.

(i) Every charter vessel fishing trip authorized by such a permit and on which halibut are caught and retained must begin or end at a location(s) specified on the application for a community charter halibut permit and that is within the boundaries of the eligible community designated on the permit. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

(ii) Community charter halibut permits may be used only within the regulatory area for which they are designated to catch and retain halibut.

(6) *Application procedure.* To be complete, a community charter halibut

permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicants' knowledge, all statements in the application are true and complete. An application for a community charter halibut permit will be made available by NMFS and may be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application. Electronic deliveries other than facsimile will not be accepted.

(7) An annual report on the use of charter halibut permits must be submitted by the CQE as required at §679.5(t) of this title.

(1) *Military charter halibut permit.* NMFS will issue a military charter halibut permit without an angler endorsement to an applicant provided that the applicant is a Morale, Welfare and Recreation Program of the United States Armed Services.

(1) *Limitations.* A military charter halibut permit is non-transferable and may be used only in the regulatory area (2C or 3A) designated on the permit.

(2) *Application procedure.* An applicant may apply for a military charter halibut permit at any time. To be complete, a military charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicants' knowledge, all statements in the application are true and complete. An application for a military charter halibut permit will be made available by NMFS and may be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application. Electronic deliveries other than facsimile will not be accepted.

[75 FR 600, Jan. 5, 2010, as amended at 75 FR 56909, Sept. 17, 2010; 78 FR 33650, June 4, 2013; 78 FR 75890, Dec. 12, 2013; 80 FR 35207, June 19, 2015; 84 FR 64026, Nov. 20, 2019; 86 FR 70754, Dec. 13, 2021]

FIGURE 1 TO SUBPART E OF PART 300—SITKA LOCAL AREA MANAGEMENT PLAN

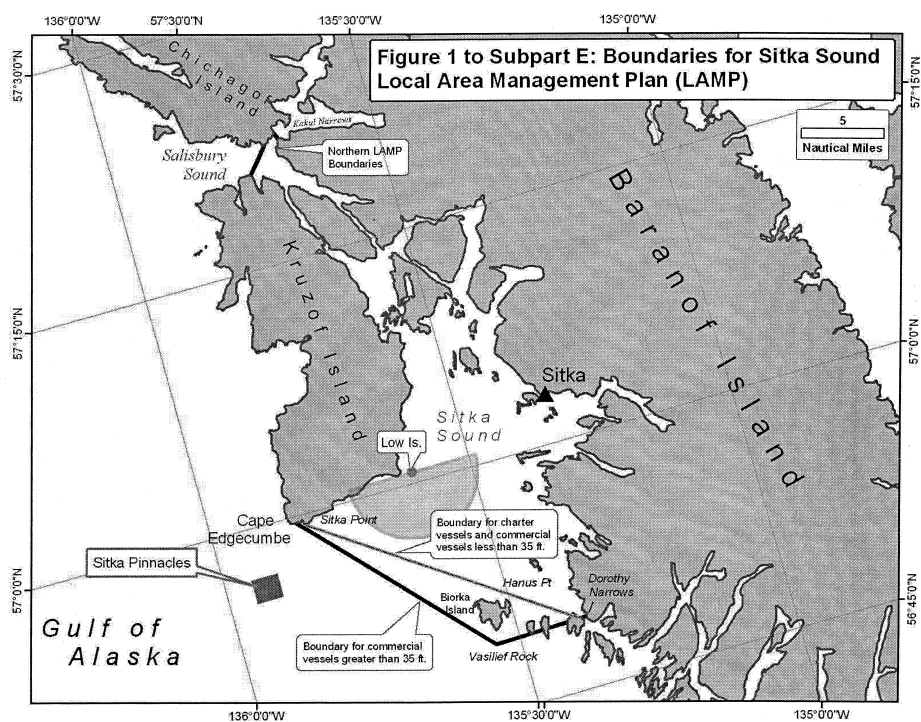
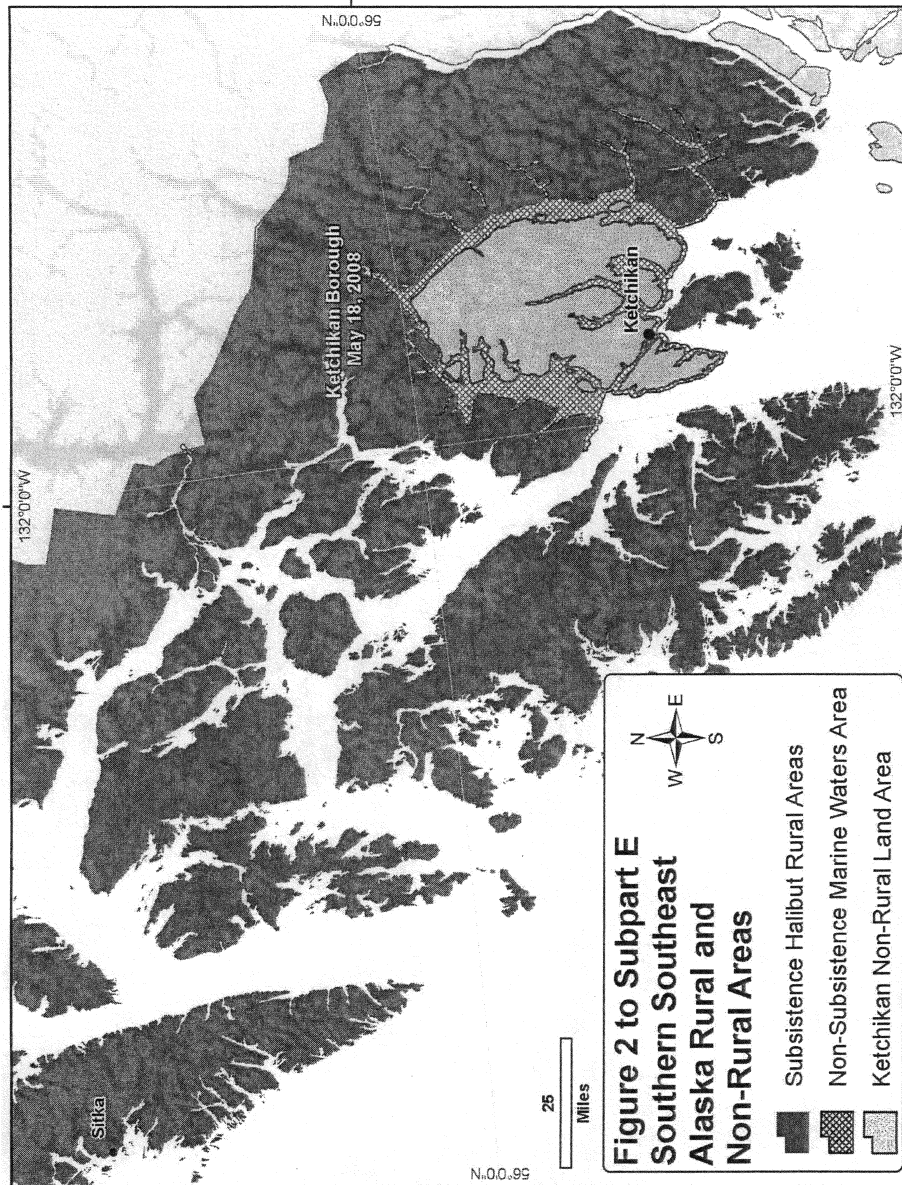
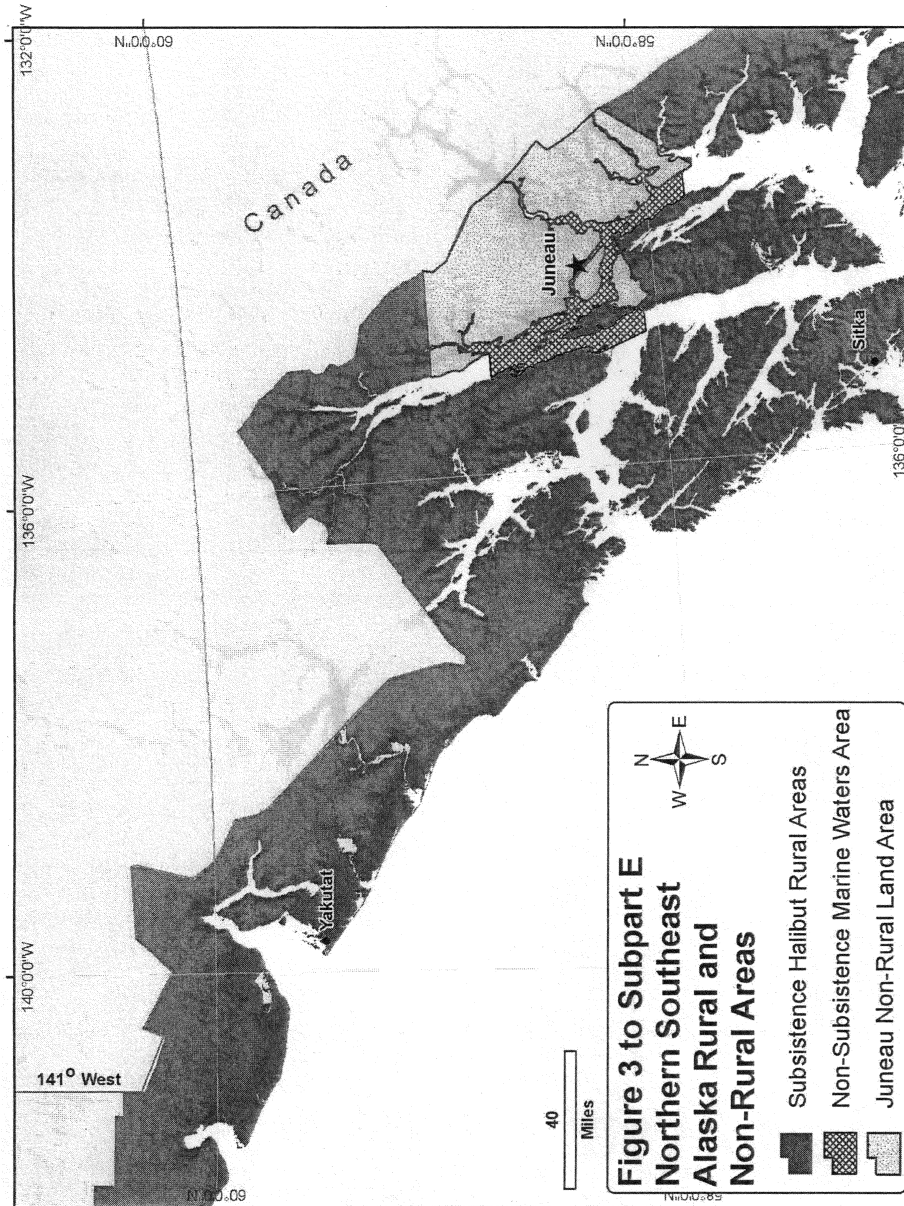


FIGURE 2 TO SUBPART E OF PART 300—SOUTHERN SOUTHEAST ALASKA RURAL AND NON-RURAL AREAS



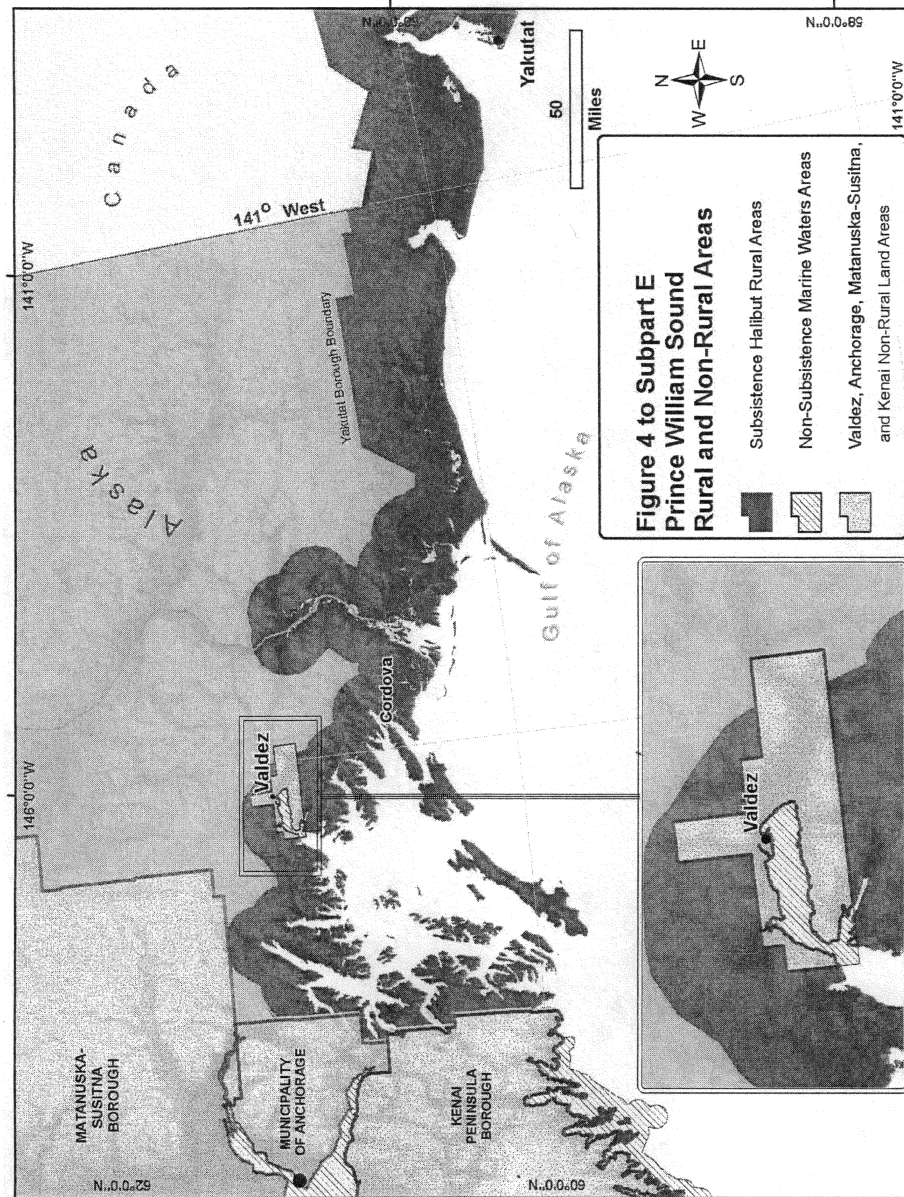
[74 FR 57110, Nov. 4, 2009]

FIGURE 3 TO SUBPART E OF PART 300—NORTHERN SOUTHEAST ALASKA RURAL AND NON-RURAL AREAS



[74 FR 57110, Nov. 4, 2009]

FIGURE 4 TO SUBPART E OF PART 300—PRINCE WILLIAM SOUND RURAL AND NON-RURAL AREAS



[74 FR 57110, Nov. 4, 2009]

FIGURE 5 TO SUBPART E OF PART 300—ANCHORAGE, MATANUSKA-SUSITNA, AND KENAI RURAL AND NON-RURAL AREAS

Figure 5 to Subpart E of Part 300—Anchorage, Matanuska-Susitna, and Kenai Rural and Non-Rural Areas

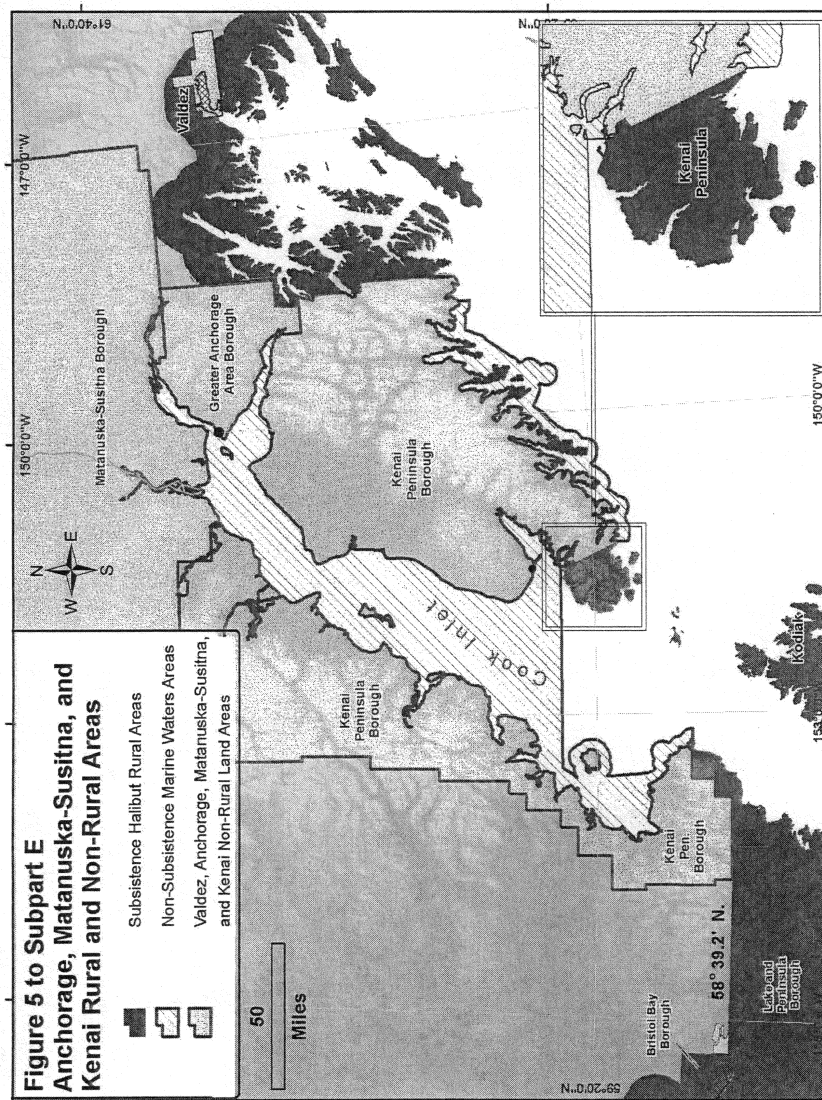
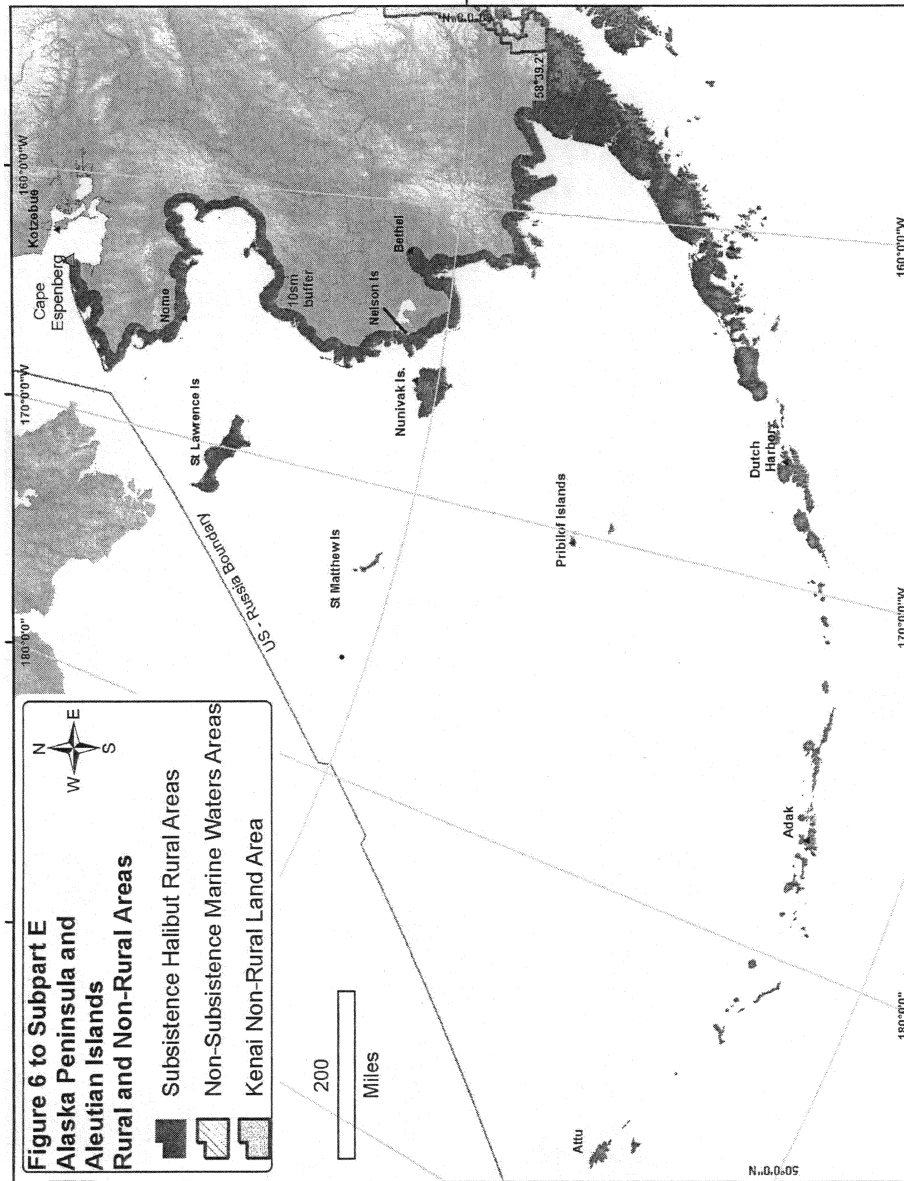
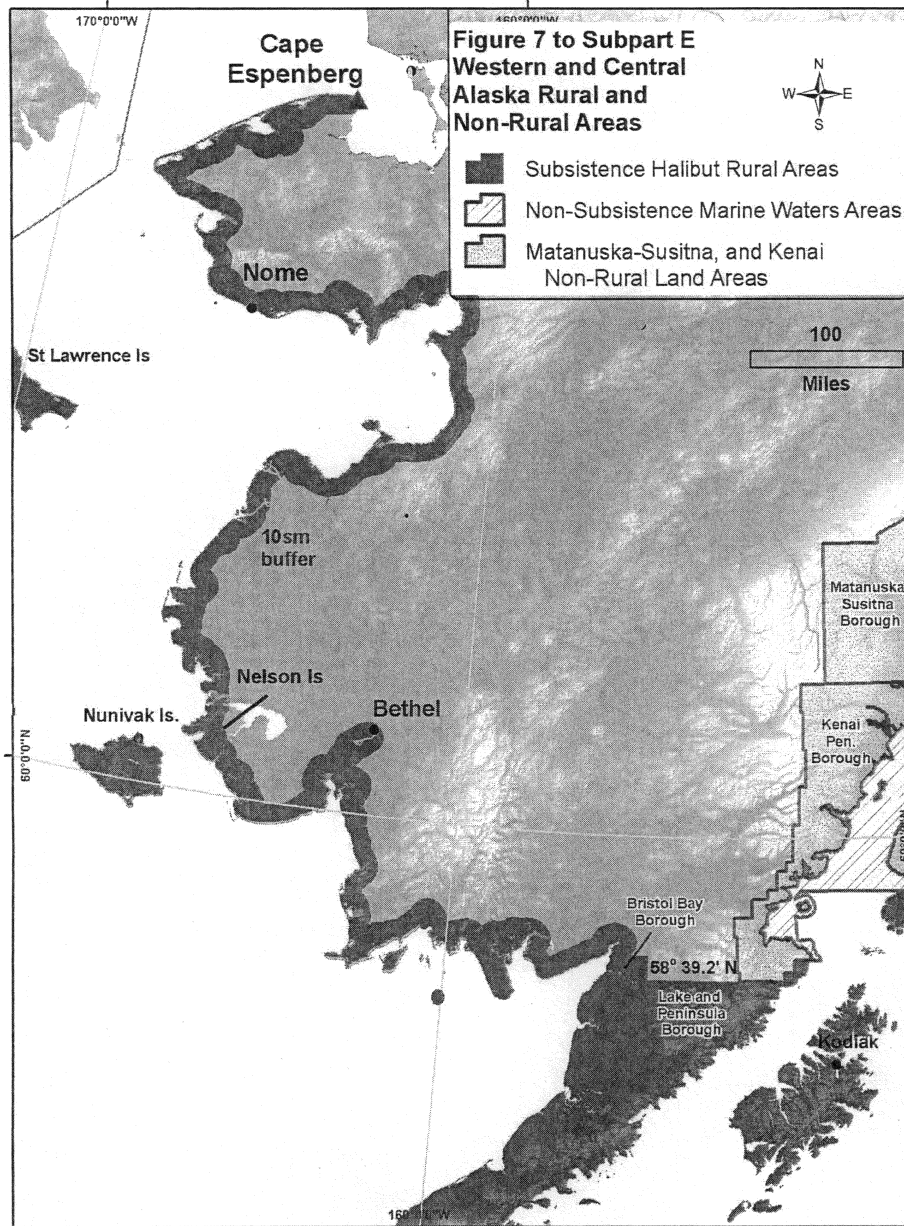


FIGURE 6 TO SUBPART E OF PART 300—ALASKA PENINSULA AND ALEUTIAN ISLANDS
RURAL AND NON-RURAL AREAS



[74 FR 57110, Nov. 4, 2009]

FIGURE 7 TO SUBPART E OF PART 300—WESTERN AND CENTRAL ALASKA RURAL AND NON-RURAL AREAS



[74 F.R. 57110, Nov. 4, 2009]

Int'l. Fishing and Related Activities**§ 300.90****TABLE 1 TO SUBPART E OF PART 300— DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT**

If the area 2C annual combined catch limit (CCL) in net pounds is:	then the area 2C annual commercial allocation is:
<5,000,000 lb	81.7% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb	the Area 2C CCL minus a fixed 915,000-lb allocation to the charter halibut fishery.
>5,755,000 lb	84.1% of the Area 2C CCL.

[78 FR 75890, Dec. 12, 2013]

TABLE 2 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT

If the area 3A annual combined catch limit (CCL) in net pounds is:	then the area 3A annual commercial allocation is:
<10,000,000 lb	81.1% of the Area 3A CCL.
≥10,000,000 and ≤10,800,000 lb	the Area 3A CCL minus a fixed 1,890,000-lb allocation to the charter halibut fishery.
>10,800,000 and ≤20,000,000 lb	82.5% of the Area 3A CCL.
>20,000,000 and ≤25,000,000 lb	the Area 3A CCL minus a fixed 3,500,000-lb allocation to the charter halibut fishery.
>25,000,000 lb	86.0% of the Area 3A CCL.

[78 FR 75890, Dec. 12, 2013]

TABLE 3 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the area 2C annual combined catch limit for halibut in net pounds is:	then the area 2C annual charter allocation is:
<5,000,000 lb	18.3% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb	915,000 lb.
>5,755,000 lb	15.9% of the Area 2C CCL.

[78 FR 75890, Dec. 12, 2013]

TABLE 4 TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the area 3A annual combined catch limit (CCL) for halibut in net pounds is:	then the area 3A annual charter allocation is:
<10,000,000 lb	18.9% of the Area 3A annual combined catch limit.
≥10,000,000 and ≤10,800,000 lb	1,890,000 lb.
>10,800,000 and ≤20,000,000 lb	17.5% of the Area 3A annual combined catch limit.
>20,000,000 and ≤25,000,000 lb	3,500,000 lb.
>25,000,000 lb	14.0% of the Area 3A annual combined catch limit.

[78 FR 75890, Dec. 12, 2013]

Subpart F—Fraser River Sockeye and Pink Salmon Fisheries**§ 300.90 Purpose and scope.**

AUTHORITY: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

This subpart implements the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644) (Act) and is intended to supplement, not conflict with, the fishery

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regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985 (Treaty).

§ 300.91 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

All-citizen means any person who is not a treaty Indian fishing in that treaty Indian's tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

Authorized officer means, in addition to those individuals identified under *authorized officer* at § 300.2, any state, Federal, or other officer as may be authorized by the Secretary in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

Commission means the Pacific Salmon Commission established by the Pacific Salmon Treaty.

Consistent regulation or consistent order means any Federal, state, or treaty Indian tribal regulation or order that is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

Fishing gear—

(1) *Gill net* means a fishing net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

(2) *Purse seine* means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(3) *Reef net* means a non-self-fishing open bunt square or rectangular section of mesh netting suspended be-

tween two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(4) *Troll fishing gear* means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(5) *Treaty Indian fishing gear* means fishing gear defined authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

Fraser River Panel means the Fraser River Panel established by the Pacific Salmon Treaty.

Fraser River Panel Area (U.S.) means the United States' portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(1) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° N. lat., excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Beale and all the waters of Nitinat Lake and the entrance thereto.

(2) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (1) of this definition, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway (Burlington Northern Railroad), thence northerly

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following the shoreline of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, then westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shoreline to Welcome Point on Sechelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island, to the starting point at Bonilla Point, as shown on the British Admiralty Chart Number 579, and on the U.S. Coast and Geodetic Survey Chart Number 6300, as corrected to March 14, 1930, copies of which are annexed to the 1930 Convention between Canada and the United States of America for Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System as amended, signed May 26, 1930. [Note: U.S. Coast and Geodetic Survey Chart Number 6300 has been replaced and updated by NOAA Chart Number 18400.]

(3) The Fraser River and the streams and lakes tributary thereto.

(4) The Fraser River Panel Area (U.S.) includes Puget Sound Management and Catch Reporting Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 7D, and 7E as defined in the Washington State Administrative Code at Chapter 220-22 as of June 27, 1986.

Fraser River Panel regulations means regulations applicable to the Fraser River Panel Area that are recommended by the Commission (on the basis of proposals made by the Fraser River Panel) and approved by the Secretary of State.

Mesh size means the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh of a net.

Pink salmon means *Oncorhynchus gorbuscha*.

Sockeye salmon means the anadromous form of *Oncorhynchus nerka*.

Treaty fishing places (of an Indian tribe) means locations within the Fraser River Panel Area (U.S.) as determined in or in accordance with Final

Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), to be places at which that treaty Indian tribe may take fish under rights secured by treaty with the United States.

Treaty Indian means any member of a treaty Indian tribe whose treaty fishing place is in the Fraser River Panel Area (U.S.) or any assistant to a treaty Indian authorized to assist in accordance with § 300.95(d).

Treaty Indian tribe means any of the federally recognized Indian tribes of the State of Washington having fishing rights secured by treaty with the United States to fish for salmon stocks subject to the Pacific Salmon Treaty in treaty fishing places within the Fraser River Panel Area (U.S.). Currently these tribes are the Makah, Tribe, Lower Elwha Klallam Tribe, Port Gamble Klallam Tribe, Jamestown Klallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribe.

§ 300.92 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) with respect to fishing activities addressed herein.

(b) Any person fishing subject to this subpart is bound by the international boundaries now recognized by the United States within the Fraser River Panel Area (U.S.) described in § 300.91, notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the EEZ should consult Federal regulations at part 663 of this title for applicable requirements, including the requirement that vessels engaged in commercial fishing for

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groundfish (except commercial passenger vessels) have vessel identification in accordance with §663.6. Federal regulations governing salmon fishing in the EEZ, which includes a portion of the Fraser River Panel Area (U.S.), are at part 661 of this title. Annual regulatory modifications are published in the FEDERAL REGISTER.

(d) Except as otherwise provided in this subpart, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR part 249, subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this subpart relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

§ 300.93 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220–69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

§ 300.94 Prohibitions and restrictions.

In addition to the prohibitions in §300.4, the following prohibitions and restrictions apply.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to sockeye and pink salmon fishing in the Fraser River Panel Area (U.S.):

(1) The Fraser River Panel Area (U.S.) is closed to sockeye and pink salmon fishing, unless opened by Fraser River Panel regulations or by inseason orders of the Secretary issued under §300.97 that give effect to orders of the Fraser River Panel, unless such orders are determined not to be consistent with domestic legal obligations. Such regulations and inseason orders may be further implemented by regulations promulgated by the United

States, the State of Washington, or any treaty Indian tribe, which are also consistent with domestic legal obligations.

(2) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for, or take and retain, any sockeye or pink salmon:

(i) Except during times or in areas that are opened by Fraser River Panel regulations or by inseason order, except that this provision will not prohibit the direct transport of legally caught sockeye or pink salmon to off-loading areas.

(ii) By means of gear or methods not authorized by Fraser River Panel regulations, inseason orders, or other applicable Federal, state, or treaty Indian tribal law.

(iii) In violation of any applicable area, season, species, zone, gear, or mesh size restriction.

(b) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to—

(1) Remove the head of any sockeye or pink salmon caught in the Fraser River Panel Area (U.S.), or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(2) Fail to permit an authorized officer to inspect a record or report required by the State of Washington or treaty Indian tribal authority.

(c) Notwithstanding paragraph (a) of this section, nothing in this subpart will be construed to prohibit the retention of sockeye or pink salmon caught by any person while lawfully engaged in a fishery for subsistence or ceremonial purposes pursuant to treaty Indian tribal regulations, for recreational purposes pursuant to recreational fishing regulations promulgated by the State of Washington, or as otherwise authorized by treaty Indian tribal or State of Washington law or regulation, provided that such treaty Indian tribal or State regulation is consistent with U.S.-approved Commission fishery regimes, Fraser River Panel regulations, or inseason orders of the Secretary applicable to fishing in the Fraser River Panel Area (U.S.).

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(d) The following types of fishing gear are authorized, subject to the restrictions set forth in this subpart and according to the times and areas established by Fraser River Panel regulations or inseason orders of the Secretary:

(1) All citizens: Gill net, purse seine, reef net, and troll fishing gear. Specific restrictions on all citizens gear are contained in the Washington State Administrative Code of Chapter 220-47.

(2) Treaty Indians: Treaty Indian fishing gear.

(e) Geographic descriptions of Puget Sound Salmon Management and Catch Reporting Areas, which are referenced in the Commission's regimes, Fraser River Panel regulations, and in inseason orders of the Secretary, are found in the Washington State Administrative Code at Chapter 220-22.

§ 300.95 Treaty Indian fisheries.

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe's treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over these fisheries. Fishing by a treaty Indian outside the applicable Indian tribe's treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(c) *Identification.* (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times while fishing or engaged in any activity related to fishing the treaty Indian identification required by 25 CFR 249.3 or by applicable tribal law.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or

her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(4) Any treaty Indian fishing under this subpart must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(d) *Fishing assistance.* (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian's tribe, receive fishing assistance from, and only from, the treaty Indian tribal member's spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this subpart.

(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian's gear or location.

(3) Treaty Indians are prohibited from participating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are

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aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries management organization, the Northwest Indian Fisheries Commission, the Commission, or a fisheries management agency of the United States or the State of Washington.

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Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures described in the Magnuson-Stevens Act.

§ 300.97 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this subpart.

(b) *Notice of inseason orders.* (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through Area Code 206 toll-free telephone hotlines. All-citizen fisheries: the hotline telephone number is published in the inseason notice procedures section of the annual management measures for West Coast Salmon Fisheries, published in the FEDERAL REGISTER; Treaty Indian fisheries hotline: 1-800-562-6142.

(2) Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(3) Inseason orders may also be communicated through news releases to

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radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the FEDERAL REGISTER as soon as practicable after they are issued.

[61 FR 35550, July 5, 1996, as amended at 74 FR 44771, Aug. 31, 2009]

Subpart G—Antarctic Marine Living Resources

AUTHORITY: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

SOURCE: 82 FR 6223, Jan. 19, 2017, unless otherwise noted.

§ 300.100 Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA or Act), 16 U.S.C. 2431 *et seq.*

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources and other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The import, export, and re-export into the United States of any Antarctic marine living resource.

§ 300.101 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention) the terms used in this subpart have the following meanings for purposes of this subpart. If a term is defined differently in § 300.2, than in the Act, or Convention, the definition in this section shall apply.

ACA means the Antarctic Conservation Act of 1978 (16 U.S.C. 2401, *et seq.*).

Annual or biennial measure means a conservation measure that:

(1) Applies to the operation of the Convention's commercial or exploratory fisheries such as gear, catch, and effort restrictions and time and area closures;

(2) Generally expires after one or two fishing season(s); and

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(3) Does not require the development of policy options or a regulatory framework.

Antarctic convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

Lat.	Long.
50° S	0.
50° S	30° E.
45° S	30° E.
45° S	80° E.
55° S	80° E.
55° S	150° E.
60° S	150° E.
60° S	50° W.
50° S	50° W.
50° S	0.

Antarctic marine living resources or AMLR(s) means:

(1) The populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence;

(2) All parts or products of those populations and species set forth in paragraph (1) of this definition.

Centralized Vessel Monitoring System (C-VMS) means the system operated by the Secretariat of CCAMLR that receives reports of positional and other information from satellite-linked mobile transceiver units located on vessels that are submitted to the CCAMLR Secretariat, either directly from the vessel or through the relevant flag State.

Commission or *CCAMLR* means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention Area means all waters south of the Antarctic Convergence.

Dealer means a person who imports AMLRs into, or exports or re-exports AMLRs from, the United States.

Dissostichus catch document (DCD) is a document generated through CCAMLR's electronic catch documentation scheme (CDS), containing information relating to the harvest, landing, and transshipment of *Dissostichus* species.

Dissostichus export document (DED) is a document generated through the CCAMLR's electronic CDS, containing

information relating to the export of *Dissostichus* spp.

Dissostichus re-export document (DRED) is a document generated through CCAMLR's electronic CDS, containing information relating to the re-export of *Dissostichus* spp.

Dissostichus species or *Dissostichus spp.* means Patagonian toothfish and Antarctic toothfish, and any parts or products therefrom.

Enhanced mobile transceiver unit or *EMTU* means a transceiver or communication device, including all hardware and software, carried and operated on a vessel as part of a vessel monitoring system.

Export means any movement of fish or fish product from a territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of that customs union.

First receiver means the person who first receives AMLRs landed from a vessel licensed under 50 CFR 300.107 at a U.S. port.

Fish means finfish, mollusks, and crustaceans.

Fishery means:

(1) One or more stocks of fish that are treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(2) Any fishing for such stocks.

Harvesting vessel means any vessel of the United States (including any boat, ship, or other craft), that is used for, equipped to be used for, or of a type that is normally used for harvesting.

Import means the physical entering or bringing of a fish or fish product into any part of the geographical territory under the control of a State, except where the catch is landed or transshipped within the definitions of landing or transshipment.

Individual permit means a National Science Foundation (NSF) permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under §216.31 of this chapter; or

an endangered species permit issued under § 222.21 of this chapter.

Inspection vessel means a vessel carrying a CCAMLR inspector and displaying the pennant approved by CCAMLR to identify such vessel.

International observer means a scientific observer operating in accordance with the CCAMLR Scheme of International Scientific Observation and the terms of a bilateral arrangement concluded between the United States and another member of CCAMLR for the placement of a U.S. national onboard a vessel flagged by another member of CCAMLR or for the placement of the national of another member of CCAMLR onboard a vessel of the United States.

Land or *Landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded. However, for purposes of catch documentation as provided for in § 300.106, land or landing means the initial unloading or transfer of *Dissostichus* spp. in any form from a vessel to dockside even if such fish are subsequently transferred to a container or to another vessel in a port or free trade zone.

National observer means a U.S. national placed and operating onboard a vessel of the United States as a scientific observer in accordance with § 300.111.

National Seafood Inspection Laboratory means the NMFS laboratory located at 3209 Frederic Street, Pascagoula, MS 39567, telephone (228) 769–8964, email PTFReporting@noaa.gov.

Office of Law Enforcement (OLE) refers to the NOAA Office of Law Enforcement.

Port-to-port means from the time the vessel leaves port to the time that the vessel returns to port and at all points in between.

Real-time means as soon as possible, but at least every hour with no more than a 1-hour delay.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Re-export means any movement of a fish or fish product from a territory under the control of a State, free trade zone, or Member State of a customs union of import unless that State, free

trade zone, or any Member State of that customs union is the first place of landing, in which case the movement is an export within the definition of export.

Seal excluder device means a barrier within the body of a trawl comprised of a metal frame, nylon mesh, or any material that results in an obstruction to seals between the mouth opening and the cod end of the trawl. The body of the trawl net forward of the barrier must include an escape opening through which seals entering the trawl can escape.

Specially Validated Dissostichus Catch Document (SVD CD) means a Dissostichus catch document that has been specially issued by a State to accompany seized or confiscated *Dissostichus* spp. offered for sale or otherwise disposed of by the State.

Transship or transshipment means the transfer of fish or fish products, other AMLRs, or any other goods or materials directly from one vessel to another. However, for purposes of catch documentation as provided for in § 300.106, transship or transshipment means the transfer of *Dissostichus* spp. that has not been previously landed, from one vessel directly to another, either at sea or in port.

Vessel Monitoring System (VMS) means a system that uses satellite-linked EMTUs installed on vessels to allow a flag State or other entity to receive automatic transmission of positional and other information related to vessel activity.

§ 300.102 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.

(b) The ACA implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The ACA and its implementing regulations (45 CFR part 670) apply to certain defined activities of U.S. citizens south of 60° S. lat.

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(c) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs.

(d) Rule making exceptions. When implementing conservation measures adopted and notified by CCAMLR, NMFS may apply the following exceptions to Administrative Procedure Act (APA) rulemaking requirements at 5 U.S.C. 553(b)–(d):

(1) The foreign affairs function exception of the APA, 5 U.S.C. 553(a)(1); or

(2) The exception under subsection 307(b) of AMLRCA, 16 U.S.C. 2436(b), that provides that, notwithstanding 5 U.S.C. 553(b)–(d), NMFS may publish in the FEDERAL REGISTER a final regulation to implement any CCAMLR-adopted conservation measure—

(i) That has been in effect for 12 months or less, beginning on the date that the Commission notifies the United States of the conservation measure under Article IX of the Convention; and

(ii) With respect to which the Secretary of State does not notify the Commission in accordance with section 305(a)(1) of AMLRCA within the time period allotted for objections under Article IX of the Convention.

(e) Annual or biennial measures. NMFS may implement annual or biennial measures adopted by CCAMLR as conditions to vessel permits issued under section 300.107, instead of through rulemaking.

§ 300.103 Scientific research.

(a) This section applies to any person, using a vessel for research purposes, who intends to catch more than 1 tonne of finfish or krill or use gear other than longline, trawl, or pot to catch *Dissostichus* spp.

(b) Any person planning to use a vessel for research purposes, when the estimated research catch is expected to be less than 50 tonnes of finfish in a season, and no more than the amounts specified in Table 1, must notify the Assistant Administrator at least 2 months in advance of the planned research using the CCAMLR Format for Notification of Research Vessel Activity, Format 1. A copy of the format is available from NMFS Headquarters. The format requires:

(1) Name and registration number of vessel;

(2) Division and subarea in which research is to be carried out;

(3) Estimated dates of entering and leaving the Convention Area;

(4) Purposes of research; and

(5) Fishing equipment to be used (bottom trawl, midwater trawl, longline, crab pots, other).

TABLE 1—TAXA-SPECIFIC THRESHOLDS FOR NOTIFICATION OF RESEARCH VESSEL ACTIVITY

Taxon	Gear type	Expected catch
Thresholds for finfish taxa:		
<i>Dissostichus</i> spp	Longline	5 tonnes.
	Trawl	5 tonnes.
	Pot	5 tonnes.
	Other	0 tonnes.
<i>Champsocephalus gunnari</i>	All	10 tonnes.
Thresholds for non-fish taxa:		
Krill	All	0.1 percent of the catch limit for a given area.
Squid.		
Crabs.		

(c) Any person planning to use any vessel for research purposes, when the estimated research catch is expected to be more than 50 tonnes or greater than the amounts specified in Table 1 must report the details of the research plan to NMFS using CCAMLR Format 2 for

Notification of Research Vessel Activity. The format must be submitted to Assistant Administrator at least 7 months in advance of the planned start date for the research. A copy of the format is available from NMFS Headquarters. The format requires:

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(1) Description of the main objective of the research;

(2) Description of the fishery operations;

(3) Description of the survey design, data collection, and analysis;

(4) Proposed catch limit;

(5) Description of the research capability; and

(6) Description of the reporting for evaluation and review.

(d) Where the expected catch is more than 50 tonnes of fish or greater than the amounts specified in Table 1, the planned fishing for research purposes shall not proceed until the Assistant Administrator authorizes the person in writing that he or she may proceed. Such authorization may be provided after completion of review of the scientific research plan by the CCAMLR Scientific Committee and Commission.

(e) A summary of the results of any research subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research and a full report must be provided within 11 months.

(f) Catch, effort, and biological data resulting from the research must be reported using the reporting format for research vessels in accordance with relevant conservation measures, with a copy to NMFS Headquarters.

§ 300.104 International Fisheries Trade Permits and AMLR first receiver permits.

(a) *General.* (1) A person may import, export, or re-export AMLR into the United States only under a NMFS-issued International Fisheries Trade Permit (IFTP). For AMLRs to be released for entry into the United States, the product must be accompanied by a vessel permit, individual permit, AMLR first receiver permit, or IFTP.

(2) All shipments of *Dissostichus* spp. must also be accompanied by accurate, complete and valid CDS documentation (including all required validations and DEDs/DREDs) as described in § 300.106, and, in the case of shipments of frozen *Dissostichus* species, a preapproval certificate issued under § 300.105, as well as verifiable information that the harvesting vessel was reporting to C-VMS from port-to-port, regardless of where the fish were harvested. For purposes

of entry of *Dissostichus* spp. into the United States, NMFS will only accept electronic CDS documents described in § 300.106.

(3) Imports of fresh or frozen *Dissostichus* spp. accompanied by an SVDCD are prohibited.

(b) *International Fisheries Trade Permit.* A person intending to import, export, or re-export AMLR must possess a valid IFTP issued under § 300.322 and file required data sets electronically with Customs and Border Protection (CBP) at the time, or in advance, of importation, exportation or re-exportation. “Required data set” has the same meaning as § 300.321 (see definition of “Documentation and data sets required”). See § 300.322 for IFTP application procedures and permit regulations. The IFTP holder may only conduct those specific activities stipulated by the IFTP.

(c) *AMLR First Receiver Permits*—(1) *General.* First receivers of AMLR catch landed from a vessel permitted under § 300.107 at a U.S. port of landing must possess an AMLR first receiver permit and may only conduct those activities described in the permit. A person issued, or required to have been issued a first receiver permit under this subpart may only receive fish from a U.S. vessel that has a valid vessel permit issued under § 300.107 as well as a valid High Seas Fishing Permit issued under 50 CFR part 300, subpart R.

(2) *Application.* Applications for the AMLR first receiver permit are available from NMFS Headquarters.

(3) *Issuance.* NMFS may issue an AMLR first receiver permit if the permit application is complete and NMFS determines that the activity proposed by the first receiver meets the requirements of the Act. First receivers of AMLR required to have a first receiver permit may only receive AMLR that were harvested in a manner consistent with CCAMLR conservation measures and this subpart.

(4) *Duration.* Unless revoked or suspended, an AMLR first receiver permit is valid from its date of issuance to its date of expiration.

(5) *Prohibition on transfer or assignment.* AMLR first receiver permits are valid only for the person to whom

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NMFS issued the permit and may not be transferred or assigned.

(6) *Changes in information submitted by permit applicants or permit holders:*

(i) *Changes in pending applications.* Applicants for an AMLR first receiver permit must report any change in the information contained in the application to the Assistant Administrator in writing as soon as possible.

(ii) *Changes occurring after permit issuance.* An AMLR first receiver permit holder must report any change to information previously submitted to the Assistant Administrator in writing within 15 days of the change. Based on such information, the Assistant Administrator may revise the permit effective upon notification to the permit holder.

(7) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. NMFS will determine the fee in accordance with the procedures in the NOAA finance handbook, available from NMFS, for calculating administrative costs of special products and services.

(8) *Reporting and recordkeeping requirements.* First receivers of AMLRs who have been issued, or are required to have, a first receiver permit under this subpart must:

(i) Accurately maintain all reports and records required by their first receiver permit and this subpart at their place of business;

(ii) Maintain the original permit at their place of business;

(iii) Make their permit, and all required reports and records, available for inspection upon the request of an authorized officer; and

(iv) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(d) *Revision, suspension, or revocation.* NMFS may revise, suspend, or revoke an IFTP, or first receiver permit, issued under this section based upon a violation of the permit, the Act, or this subpart.

(e) A person may not import a marine mammal into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

§ 300.105 Preapproval for importation of frozen *Dissostichus* species.

(a) A NMFS-issued preapproval certificate is required to import each shipment of frozen *Dissostichus* species.

(b) *Application.* Application forms for a preapproval certificate are available from NMFS Headquarters and the National Seafood Inspection Laboratory. With the exception of the U.S. Customs 7501 entry number, a complete and accurate application must be received by NMFS for each preapproval certificate at least 10 working days before the anticipated date of the importation. Dealers must supply the U.S. Customs 7501 entry number at least three working days prior to the expected arrival of a shipment of frozen *Dissostichus* species at a U.S. port.

(c) *Fees.* A person must include the processing fee with each preapproval certificate application. NMFS will determine the fee under the NOAA finance handbook procedures for calculating administrative costs of special products and services and user fees collected for administrative expenses associated with processing applications for preapproval certificates.

(d) *Issuance.* NMFS may issue a preapproval certificate for importation of a shipment of frozen *Dissostichus* species if the preapproval application form is complete and NMFS determines that the activity proposed by the applicant meets the requirements of the Act and that the resources were not harvested in violation of any CCAMLR conservation measure or in violation of any regulation in this subpart. No preapproval will be issued for *Dissostichus* species without verifiable documentation that the harvesting vessel reported to C-VMS continuously and in real-time from port-to-port, regardless of where such *Dissostichus* species were harvested.

(e) *Duration.* A preapproval certificate is valid until the *Dissostichus* product specified in the preapproval application is imported.

(f) *Transfer.* A person may not transfer or assign a preapproval certificate.

(g) *Changes in information.* (1) For pending preapproval certificates, applicants must report in writing to NMFS any changes in the information submitted in their preapproval certificate

applications. NMFS may extend the processing period for the application as necessary to review and consider any changes.

(2) *Issued preapprovals.* For issued preapproval certificates, the certificate holder must report in writing to NMFS any changes to information included in the preapproval certificate application. Any changes related to fish being imported, such as harvesting vessel or country of origin, type and quantity of the fish to be imported or Convention statistical subarea from which the resource was harvested, will void the preapproval certificate and the shipment may not be imported unless authorized by NMFS through issuance of a revised or new preapproval certificate.

(3) The provision of false information in a preapproval application, or the failure to report a change in the information contained in a preapproval application, voids the application or preapproval as applicable.

(h) NMFS will not issue a preapproval certificate for any shipment of *Dissostichus* species:

(1) Identified as originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 in the eastern and western Indian Ocean outside and north of the Convention Area;

(2) Determined to have been harvested or transshipped in contravention of any CCAMLR Conservation Measure in force at the time of harvest or transshipment;

(3) Determined to have been harvested or transshipped by a vessel identified by CCAMLR as having engaged in illegal, unreported and unregulated (IUU) fishing; or

(4) Accompanied by inaccurate, incomplete, invalid, or improperly validated CDS documentation or by a SVDCD.

[82 FR 6223, Jan. 19, 2017, as amended at 84 FR 8625, Mar. 11, 2019]

§ 300.106 Catch Documentation Scheme (CDS): Documentation and other requirements.

(a) *General.* (1) CCAMLR CDS document(s) must accompany all shipments

of *Dissostichus* species as required in this section.

(2) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by an accurate, complete, valid and validated CCAMLR CDS document.

(3) *Dissostichus* species shall not be released for entry into the United States unless all of the applicable requirements of the CCAMLR Conservation Measures and U.S. regulations have been met.

(b) *Harvesting vessels.* (1) A U.S. vessel harvesting or attempting to harvest *Dissostichus* species, whether within or outside of the Convention Area, must possess a valid vessel permit issued under §300.107, a valid High Seas Fishing Permit issued under 50 CFR part 300, subpart R, as well as DCD issued by NMFS, which is non-transferable. The master of the harvesting vessel must ensure that catch and other information specified on the DCD are accurately recorded.

(2) Prior to offloading *Dissostichus* species, the master of the harvesting vessel must:

(i) Electronically convey, by the most rapid means possible, catch and other information to NMFS and record on the DCD a confirmation number received from NMFS;

(ii) Obtain on the DCD (or copies thereof) the signature(s) of the following persons: If catch is offloaded for transshipment, the master of the vessel(s) to which the catch is transferred; or if catch is offloaded for landing, the signature of both the responsible official(s) designated by NMFS in the vessel permit and the recipient of the catch at the port(s) of landing; and

(iii) Sign the DCD (or copies thereof), electronically convey by the most rapid means possible each copy to NMFS and provide a copy to each recipient of the catch.

(3) The master of the harvesting vessel must submit the original DCD (and all copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season for which the vessel permit was issued and retain copies of the DCD for a period of 2 years.

(c) *Transshipment vessels.* (1) A U.S. vessel transshipping or attempting to

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transship *Dissostichus* species, whether within or outside of the Convention Area, must possess a valid vessel permit issued under §300.107 and a valid High Seas Fishing Permit issued under subpart R of this part. The master of a U.S. vessel receiving *Dissostichus* species by transshipment must, upon receipt of *Dissostichus* species, sign each DCD provided by the master of the vessel that offloads *Dissostichus* species.

(2) Prior to landing *Dissostichus* species, the master of the transshipping vessel must:

(i) Obtain on each DCD (or copies thereof) the signature(s) of both the responsible official(s) designated by NMFS in the vessel permit and the recipient of the catch at the port(s) of landing; and

(ii) Sign each DCD (or copies thereof), and electronically convey by the most rapid means possible each copy to NMFS and to the flag state(s) of the offloading vessel(s) and provide a copy to each recipient of *Dissostichus* species.

(3) The master of the transshipping vessel must submit all DCDs with original signatures to NMFS no later than 30 days after offloading and retain copies for a period of 2 years.

(d) *First receivers.* Any person who receives *Dissostichus* species landed by a vessel at a U.S. port must hold an AMLR first receiver permit issued under §300.104 and must sign the DCD(s) provided by the master of the vessel and retain copies at their place of business for a period of 2 years. A person issued, or required to have been issued, a first receiver permit under this subpart may only receive fish from a U.S. vessel that has a valid vessel permit issued under §300.107 as well as a valid High Seas Fishing Permit issued under 50 CFR part 300, subpart R.

(e) *Import.* (1) A person who imports fresh *Dissostichus* species must hold an IFTP issued under §300.322. To import frozen *Dissostichus* species into the United States, a person must:

(i) Obtain a preapproval certificate issued under §300.105 for each shipment. Among the information required on the application, applicants must provide the document number and export reference number on the DED or

DRED corresponding to the intended import shipment and, if requested by NMFS, additional information for NMFS to verify that the harvesting vessel reported to the C-VMS continuously and in real-time, from port-to-port, regardless of where the fish were harvested;

(ii) Ensure that the quantity of toothfish listed on the DED (or the *Dissostichus* re-export document if product is a re-export) matches the quantity listed on the preapproval application within a variance of 10 percent; and

(iii) Provide copies of the DED or DRED as needed to persons who re-export *Dissostichus* species.

(2) Imports of fresh *Dissostichus* species do not require a preapproval certificate. If the amount or value of the fresh *Dissostichus* species to be imported is below thresholds that trigger the requirement to file entry documentation with U.S. Customs and Border Protection via the Automated Commercial Environment (see definition in §300.321), the importer must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the harvesting vessel's reporting to C-VMS from port-to-port is not required for imports of fresh *Dissostichus* species.

(f) *Re-export.* (1) To re-export *Dissostichus* species, a person must hold an IFTP issued under §300.322 and:

(i) Submit to NMFS a complete and accurate application for a NMFS *Dissostichus* re-export document, and

(ii) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated DRED.

(2) When applying for a re-export approval, a person must reference or include the approval number issued by NOAA, for the original validated *Dissostichus* import document.

(g) *Export.* (1) To export U.S.-harvested *Dissostichus* species, the person must possess an IFTP issued under §300.322 and:

(i) Submit to NMFS a complete and accurate NMFS application for a DED; and

(ii) Obtain validation by a responsible official(s) designated by NMFS

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and receive an electronically-generated DED.

(2) Any person who exports *Dissostichus* species must include the original validated DED with the export shipment.

(h) *Recordkeeping.* Any person who imports, exports or re-exports *Dissostichus* spp. must:

(1) Retain a copy of all CDS documents at the person's place of business for a period of 2 years from the date on the documents and provide copies as needed to NMFS; and

(2) Make the IFTP and all CDS documents and other records and reports required by this subpart available for inspection upon request of an authorized officer.

§ 300.107 Vessel permits and requirements.

(a) *General.* In addition to the High Seas Fishing Permit requirements at 50 CFR part 300, subpart R:

(1) Every vessel of the United States that attempts to harvest or harvests any AMLR must have a vessel permit authorizing the harvest issued under this subpart, unless the attempt or harvest occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a vessel permit do not require a separate permit, but are covered by the permit issued to the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the owner and operator of the launching vessel.

(2) Any vessel of the United States that receives or attempts to receive any harvested AMLR from another vessel at sea, regardless of whether such transshipment occurs in the Convention Area or that receives, or attempts to receive any other goods or materials from another vessel in the Convention Area, must have a vessel permit authorizing transshipment issued under this subpart. Transshipment vessels must comply with the permitting provisions of this section. This requirement does not apply to scientific research vessels or to transshipments covered under an individual permit.

(3) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United

States to harass, capture, harm, kill, harvest, or import Marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is authorized under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) *Responsibility of owners and operators.* (1) The owners and operators of vessels permitted, or required to be permitted, under this subpart are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of a vessel issued a vessel permit under this subpart must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator as soon as possible but no later than 15 days after the change.

(4) The owner and operator of a harvesting vessel issued a permit to fish for krill in the Convention Area using trawl gear must install a seal excluder device and may not possess onboard or deploy trawl gear without a seal excluder device installed.

(c) *Application.* Application forms for vessel permits are available from NMFS Headquarters.

(1) A separate, fully completed and accurate application is required for each vessel for which a permit is requested.

(2) NMFS must receive applications for vessel permits no later than April 1 for the fishing season that will commence on or after December 1 of that year.

(3) Applications for a permit to harvest krill must, to the extent possible, identify the products to be derived from the anticipated krill catch.

(4) NMFS will only accept permit applications for vessels that have been issued an International Maritime Organization (IMO) number.

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(5) NMFS may charge a fee to recover the administrative expense of permit issuance. NMFS will determine the fee in accordance with procedures in the NOAA finance handbook, available from NMFS, for calculating administrative costs of special products and services and user fees.

(d) *Issuance.* The Assistant Administrator may issue a vessel permit if the Assistant Administrator determines that the harvesting or transshipment activities described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention provides that its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effects of the introduction of alien species, the effects of associated activities on the marine ecosystem and the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the Convention or any conservation measures in force with respect to the United States under the Convention. The Convention and the schedule of conservation measures in force can be found on the CCAMLR Web site: www.ccamlr.org.

(e) *Duration.* A vessel permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the vessel to which it is issued.

(g) *Display.* Each vessel must have on board, at all times, a valid vessel permit and the vessel operator must produce it for inspection upon the re-

quest of an authorized officer or CCAMLR inspector.

(h) *Changes in information submitted by permit applicants or holders—*(1) *Changes in pending applications.* Applicants for a vessel permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance—*(i) *Requested changes in the location, manner, or amount of harvesting.* Any changes in the location, manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If the Assistant Administrator determines that the requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(ii) *Changes other than in the location, manner or amount of harvesting.* For changes other than those addressed in paragraph (h)(2)(i) of this section, the owner or operator of a vessel that has been issued a vessel permit must report to the Assistant Administrator in writing any change in previously submitted information as soon as possible but no later than within 15 days after the change. Based on such reported information, the Assistant Administrator may revise the permit and any revised permit would be effective upon notification to the permit holder.

(i) *Conditions and restrictions.* The vessel permit will contain conditions and restrictions that the Assistant Administrator deems necessary for implementation of conservation measures that apply to the harvesting or transshipment activities. The Assistant Administrator may revise the vessel permit to include additional conditions and restrictions on the harvesting vessel as necessary to implement conservation measures in force with respect to the United States or to achieve the purposes of the Convention

or the Act. Any additional conditions or restrictions will be effective upon notification to the permit holder.

(j) *Revision, suspension, or revocation for violations.* A vessel permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. The Assistant Administrator may deny a vessel permit if the applicant or harvesting vessel was previously involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner.

(k) *Transshipment notification.* The vessel operator must notify the CCAMLR Secretariat of transshipments of AMLRs, bait, or fuel, and submit a confirmation of the notification to NMFS Headquarters, no later than 72 hours before the transshipment will take place. The vessel operator must notify the CCAMLR Secretariat of transfers of all other goods, and submit a confirmation of the notification to NMFS Headquarters, no later than 2 hours before the transshipment will take place. Notifications of intended transshipments shall include the following information, for all vessels involved:

- (1) Names, registration numbers, and IMO numbers;
- (2) International radio call signs;
- (3) Flag State;
- (4) Type of vessels, length, gross registered tonnage and carrying capacity;
- (5) Proposed time and position, in latitude and longitude, of transshipment; and
- (6) Details of the type and amount of catches and/or other goods, such as food stores and fuel, involved in the transshipment.

(l) *Reporting and recordkeeping requirements.* The operator of any vessel required to have a vessel permit under this subpart must:

- (1) Accurately maintain on board the vessel all CCAMLR reports and records required by its permit.

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(3) Within the time specified in the vessel permit, submit a copy of such reports and records to NMFS.

(4) Install a NMFS-approved EMTU on board U.S. flagged vessels harvesting AMLR for use in real-time C-VMS port-to-port reporting to a NMFS-designated land-based fisheries monitoring center or centers. The requirements for the installation and operation of the VMS are set forth in §300.112.

(5) Provide advance notice of the vessel's entry into port using the CCAMLR Port Inspection Report, including the written declaration that the vessel has not engaged in or supported illegal, unreported and unregulated (IUU) fishing in the Convention Area and has complied with relevant CCAMLR requirements. The CCAMLR Port Inspection Report, and instructions for its submission, is available from NMFS Headquarters.

§300.108 Vessel and gear identification.

(a) *Vessel identification.* (1) A vessel issued a permit under this subpart must be marked with the vessel's name and its International Radio Call Sign (IRCS) amidships on both the port and starboard sides of the superstructure or hull, so that it is visible at all times from an enforcement or inspection vessel. Fixtures inclined at an angle to the vessel's side or superstructure would be considered as suitable provided that the angle of inclination would not prevent sighting of the IRCS from another vessel or from the air. The vessel's IRCS shall also be marked on the deck. Should an awning or other temporary cover be placed so as to obscure the mark on the deck, the awning or cover shall also be marked with the IRCS. The marks should be placed athwartship with the top of the numbers or letters towards the bow.

(2) Boats, skiffs and craft carried by the vessel for fishing operations shall bear the same mark as the vessel, except that a numerical suffix specific for the boat, skiff, or craft must follow the IRCS.

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(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the vessel in block Roman alphabet letters and Arabic numerals using good quality marine paints. The letters and numbers shall be: At least 1 meter in height (h) for the IRCS placed on the hull, superstructure and/or inclined surfaces and at least 0.3 meter for marks placed on deck. The length of the hyphen shall be half the height of the letters and numbers. The width of the stroke for all letters, numbers and the hyphen shall be h/6. The space between letters and/or numbers shall not exceed h/4 nor be less than h/6. The space between adjacent letters having sloping sides (*e.g.*, A and V) shall not exceed h/8 nor be less than h/10. If a contrasting color is used for the background of the marks, it shall extend to provide a border around the mark of at least h/6.

(4) The marks and the background shall be maintained in good condition at all times.

(b) *Navigational lights and shapes.* Each vessel issued a vessel permit must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR part 81).

(c) *Gear identification.* (1) The operator of each fishing vessel must ensure that all deployed fishing gear is clearly marked at all times at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy.

(2) The operator of each harvesting vessel must ensure that deployed longlines and strings of traps or pots, and gillnets are clearly marked at all times at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered

abandoned and may be disposed of in accordance with applicable CCAMLR Conservation Measures in force with respect to the United States by any authorized officer or CCAMLR inspector.

(d) *Maintenance.* The operator of each vessel issued a vessel permit must:

(1) Keep the vessel and gear identification clearly legible and in good condition at all times;

(2) Ensure that nothing on the vessel obstructs the view of the markings from an enforcement or inspection vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the vessel's activity and are properly functioning.

§ 300.109 Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery that uses bottom trawls on the high seas of the Convention Area or a fishery for a species, using a particular method, in a statistical subarea or division for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

(2) Catch and effort data have never been submitted to CCAMLR; or

(3) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) Persons intending to develop a new fishery shall notify the Assistant Administrator no later than April 1 for the fishing season that will commence on or after December 1 and shall not initiate the fishery pending NMFS and CCAMLR review or until a vessel permit has been used under this subpart.

(c) The notification shall be accompanied by a complete vessel permit application required under § 300.107 and information on:

(1) The nature of the proposed fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(2) Biological information on the target species from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

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(3) Details of dependent and related species and the likelihood of them being affected by the proposed fishery;

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield; and

(5) If the proposed fishery will be undertaken using bottom trawl gear, the known and anticipated impacts of this gear on vulnerable marine ecosystems, including benthos and benthic communities.

§ 300.110 Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under § 300.109.

(b) A fishery continues to be classified by CCAMLR as an exploratory fishery until sufficient information is available to:

(1) Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield;

(2) Review the fishery's potential impacts on dependent and related species; and

(3) Allow the CCAMLR Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels and fishing gear.

(c) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the vessel permit issued under § 300.107, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(d) In addition to the requirements in § 300.107, any person planning to enter an exploratory fishery must notify the Assistant Administrator no later than April 1 for the fishing season that will commence on or after December 1 and shall not enter the fishery pending NMFS and CCAMLR review or until a vessel permit has been used under this subpart. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of § 300.107 have been met and CCAMLR has considered the notification.

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(e) The notification shall be accompanied by a complete vessel permit application required under § 300.107 and information on:

(1) The nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(2) Specification and full description of the types of fishing gear to be used;

(3) Biological information on the target species from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity; details of dependent and related species and the likelihood of their being affected by the proposed fishery;

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield;

(5) If the proposed fishery will be undertaken using bottom trawl gear, information on the known and anticipated impacts of this gear on vulnerable marine ecosystems, including benthos and benthic communities; and

(6) Any other information the Assistant Administrator requires to fully implement the relevant conservation measures.

§ 300.111 Scientific observers.

(a) Except as otherwise specified, this section applies to both national observers and international observers, as well as to vessels of the United States carrying, or required to carry, such observers.

(b) All vessels of the United States fishing in the Convention Area must carry one or more scientific observers as required by CCAMLR conservation measures or as specified in a vessel permit issued under this subpart.

(c) All vessels of the United States conducting longline sink rate testing outside the Convention Area and pursuant to CCAMLR protocols must carry one or more scientific observers as specified in the vessel permit issued under this subpart.

(d) *Procurement of observers by vessel.* Owners of vessels required to carry scientific observers under this section must arrange for observer services in

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coordination with the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division. The vessel owner is required to pay for observer services through an observer service provider who has provided observer services to the Federal government within the past year. In situations where no qualified observer is available through a qualified observer provider, the Secretary may authorize a vessel owner to arrange for an observer by alternative methods. An observer may not be paid directly by the vessel owner.

(e) *Vessel responsibilities.* An operator of a vessel required to carry one or more scientific observers must:

(1) *Accommodations and food.* Provide, at no cost to the observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel; and

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and have on board:

(i) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) *Health and safety regulations.* Comply with the observer health and safety regulations at part 600 of this title.

(4) *Transmission of data.* Facilitate transmission of observer data by allowing observers, on request, to use the vessel's communications equipment and personnel for the confidential entry, transmission, and receipt of work-related messages.

(5) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position, course and speed.

(6) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces,

weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(7) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(8) *Records.* Allow observers to inspect and copy the vessel's DCD, product transfer forms, any other logbook or document required by regulations or CCAMLR conservation measures, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(9) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins;

(ii) Providing the observers with a safe work area adjacent to the sample collection site;

(iii) Collecting bycatch when requested by the observers;

(iv) Collecting and carrying baskets of fish when requested by observers; and

(v) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(10) *Transfer at sea.* (i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(f) *Insurance.* The observer service provider or vessel owner must provide insurance for national observers that provides compensation in the event of

an injury or death during the entire deployment, from the point of hire location to return, equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.50 of this title.

(g) *Educational requirements.* National observer candidates must:

(1) Have a Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences; or

(2) Have successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course.

(h) *Health requirements.* National observers, and U.S. observers deployed as international observers, must have a signed and dated statement from a licensed physician that he or she has physically examined the observer. The statement must confirm that, based upon the physical examination, the observer does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of an observer and the dangerous, remote and rigorous nature of the work. The physician's statement must be submitted to the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division program office prior to approval of an observer. The physical exam must have occurred during the 12 months prior to the observer's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(i) *Standards of observer conduct.* (1) Observers:

(i) Must not have a direct financial interest in the fishery being observed, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching,

taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) Must not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(iv) Must not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(2) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(j) *Standards of observer behavior.* Observers must:

(1) Avoid any behavior that could adversely affect the confidence of the public in the integrity of the CCAMLR Scheme of International Scientific Observation or of the government, including but not limited to the following:

(2) Perform their assigned duties as described in the CCAMLR Scientific Observers Manual and must complete the CCAMLR Scientific Observer Logbooks and submit them to the CCAMLR Data Manager at the intervals specified by the Data Manager.

(3) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(4) Not disclose collected data and observations made on board the vessel or in the processing facility to any person, except the owner or operator of the observed vessel or processing facility or NMFS.

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(5) Refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the CCAMLR Scheme of International Scientific Observation as a whole. This includes, but is not limited to:

(i) Refrain from engaging in the use, possession, or distribution of illegal drugs; or

(ii) Refrain from engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(k) *Sampling station*—(1) *Minimum work space aboard at sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 meter (m) deep in the area in front of the table and scale.

(2) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(3) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

§ 300.112 Vessel monitoring system.

(a) *Requirement for use.* Within 30 days after NMFS publishes in the FEDERAL REGISTER a list of approved EMTUs and associated communications service providers for the AMLR fishery, an owner or operator of a vessel that has been issued a vessel permit under § 300.107 must ensure that such vessel

has a NMFS-type-approved, operating EMTU installed and continuously operating for the duration of any fishing trip involving the harvesting of AMLR.

(b) *Installing and activating the EMTU.* Only EMTUs that have been approved by NMFS for use in the AMLR fishery may be used. The vessel owner or operator shall obtain and have installed on the fishing vessel, by a qualified marine electrician and in accordance with any instructions provided by the VMS Helpdesk or OLE, a NMFS type-approved EMTU.

(c) *Interference with the EMTU.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the EMTU, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's EMTU is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by NMFS that a vessel's EMTU is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the EMTU is operable.

(e) *Access to data.* OLE is authorized to receive and relay transmissions from the EMTU. OLE will share a vessel's position data obtained from the EMTU, if requested, with other NMFS offices, the USCG, and their authorized officers and designees.

(f) *Installation and operation of the VMS.* NMFS has authority over the installation and operation of the EMTU. NMFS may authorize the connection or order the disconnection of additional equipment, including a computer, to any EMTU when deemed appropriate by NMFS.

§ 300.113 CCAMLR Ecosystem Monitoring Program sites.

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) site designated in accordance with the

CCAMLR conservation measure describing the procedure for according protection for CEMP sites.

(2) If a CEMP site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, such as the sites listed in 45 CFR 670.29), an applicant seeking to enter such site must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP site management plan. In all other cases, an applicant seeking a permit to enter a CEMP site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit.* (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not authorized to undertake any activities within a CEMP Protected Site that are not in compliance with the conditions of the CEMP permit and the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes), as implemented by the ACA and any superseding legislation. (Persons interested in conducting activities subject to the

Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).

(2) The Convention for the Conservation of Antarctic Seals.

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) *Issuance criteria.* Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act;

(2) There is sufficient reason, established in the CEMP permit application, that the scientific purpose for the intended entry cannot be served elsewhere; and

(3) The actions permitted will not violate any provisions or prohibitions of the site's management plan submitted in compliance with the CCAMLR Conservation Measure describing the procedure for according protection to CEMP sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the site's management plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the site's management plan. Prospective applicants may obtain copies of the relevant management plans and the CCAMLR Conservation Measure describing the procedure for according protection to CEMP sites by requesting them from NMFS Headquarters.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities

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conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(i) *Additional conditions and restrictions.* The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(j) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act, or this subpart.

(2) Failure to report a change in the information submitted in a CEMP permit application within 10 days of the change is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(k) *Exceptions.* Entry into a CEMP site is lawful if committed under emergency conditions to prevent the loss of human life, avoid compromising human safety, prevent the loss of vessels or aircraft, or to prevent environmental damage.

(l) *Protected sites.* Sites protected by the Antarctic Treaty and regulated under the ACA are listed at 45 CFR part 670 subpart F.

§ 300.114 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Harvest any AMLR without a permit for such activity as required by § 300.107.

(b) Import into, or export or re-export from, the United States any AMLR: Taken by a vessel of the United States without a permit issued under

this subpart or by a foreign-flagged vessel without valid authorization from the applicable flag state to harvest those resources; without accurate, complete, valid and properly validated CDS documentation as required by § 300.106; without an IFTP as required by § 300.104; or in violation of the terms and conditions for such import, export or re-export as specified on the IFTP.

(c) Engage in or benefit from harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control or possession of, any AMLR that was harvested in violation of a conservation measure in force with respect to the United States under Article IX of the Convention or in violation of any regulation promulgated under the Act, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector or authorized officer to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting any search, investigation, or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to any CCAMLR inspector or authorized officer.

(g) Refuse to sign a written notification of alleged violations of CCAMLR conservation measures in force prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector or authorized officer in the conduct of any boarding, search, investigation, or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting, or receive, import, export or re-export, AMLRs after the revocation, or during the period of suspension, of

an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in an area where fishing is prohibited by the Commission, other than for scientific research purposes in accordance with § 300.103.

(l) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or the conditions of any permit issued under the Act.

(m) Provide incomplete or inaccurate information about the harvest, transshipment, landing, import, export, or re-export of applicable species on any document required under this subpart.

(n) Receive AMLR from a vessel, without holding an AMLR first receiver permit as required under § 300.104, or receive AMLR from a fishing vessel that does not hold a valid vessel permit issued under § 300.107.

(o) Import, export or re-export *Dissostichus* spp. harvested or transshipped by a vessel identified by CCAMLR as having engaged in illegal, unreported and unregulated (IUU) fishing, originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 or accompanied by inaccurate, incomplete, invalid, or improperly validated CDS documentation or import or re-export *Dissostichus* spp. accompanied by a SVD CD.

(p) Import shipments of frozen *Dissostichus* spp. without a preapproval issued under § 300.105.

(q) *Observers.* (1) Assault, resist, oppose, impede, intimidate, harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Prohibit or bar by command, impediment, threat, coercion, or by re-

fusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(5) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment.

(6) Fish for or process fish without observer coverage required under § 300.111.

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(8) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to an observer.

(r) *Vessel monitoring systems.* (1) Use any vessel of the United States issued, or required to be issued, an AMLR vessel permit to conduct fishing operations unless that vessel carries a NMFS-type-approved EMTU and complies with the requirements described in this subpart.

(2) Fail to install, activate, repair or replace an EMTU prior to leaving port as specified in this subpart.

(3) Fail to operate and maintain an EMTU on board the vessel at all times as specified in this subpart.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the EMTU required to be installed on a vessel or the EMTU position reports transmitted by a vessel as specified in this subpart.

(5) Fail to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this subpart.

(6) Register an EMTU to more than one vessel at the same time.

(7) Connect, or leave connected, additional equipment to an EMTU without the prior approval of the OLE.

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(8) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of an EMTU or communication service provider.

(9) Fail to report to NMFS and to CCAMLR's C-VMS from port-to-port on any trip during which AMLR are, or are expected to be, harvested regardless of whether the vessel operates, or is expected to operate, inside the Convention Area.

(s) Trawl for krill in Convention Area fisheries without a seal excluder device or possess trawl gear without a seal excluder device installed onboard a vessel permitted, or required to be permitted, under this subpart to harvest krill with trawl gear.

(t) Harvest any AMLR in the Convention Area without a vessel permit required by this subpart.

(u) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation that the harvesting vessel reported to CCAMLR's C-VMS continuously and in real-time, from port-to-port, regardless of where such *Dissostichus* species were harvested.

§ 300.115 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) *Access and records.* (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

(2) The owner and operator of each harvesting vessel must provide to authorized officers and CCAMLR inspectors all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of CCAMLR conservation measures in effect and will afford the master the opportunity to comment on it. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(4) Any person issued a first receiver permit under this subpart, or an IFTP under § 300.322, must as a condition of that permit, allow an authorized officer access to any facility from which they engage in the first receipt, import, export or re-export of AMLR for the purpose of inspecting the facility and any fish, equipment or records therein.

(b) *Reports by non-inspectors.* All scientists, fishermen, and other non-inspectors present in the Convention Area and subject to the jurisdiction of the United States are encouraged to report any violation of CCAMLR conservation measures observed in the Convention Area to the Office of Ocean and Polar Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

(c) *Storage of AMLR.* The operator of each harvesting vessel storing AMLR in a storage space on board a vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These

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non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

§ 300.116 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.

Subpart H—Vessels of the United States Fishing in Colombian Treaty Waters

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

§ 300.120 Purpose.

This subpart implements fishery conservation and management measures as provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120) (Treaty).

§ 300.121 Definitions.

In addition to the terms defined in § 300.2, the Magnuson-Stevens Act, and § 600.10 of this title, and in the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson-Stevens Act, or the Treaty, the definition in this section shall apply.

Conch means *Strombus gigas*.

Factory vessel means a vessel that processes, transforms, or packages aquatic biological resources on board.

Lobster means one or both of the following:

(1) Smoothtail lobster, *Panulirus laeviscauda*.

(2) Caribbean spiny lobster or spiny lobster, *Panulirus argus*.

Regional Administrator means the Administrator of the Southeast Region, or a designee.

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Science and Research Director means the Director, Southeast Fisheries Science Center.

Treaty waters means the waters of one or more of the following:

(1) *Quita Sueno*, enclosed by latitudes 13°55' N. and 14°43' N. between longitudes 80°55' W. and 81°28' W.

(2) *Serrana*, enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22' N. lat., 80°20' W. long.

(3) *Roncador*, enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35' N. lat., 80°05' W. long.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

§ 300.122 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § 600.705 of this title and paragraph (b) of this section. Particular note should be made to the reference in § 600.705 to the applicability of title 46 U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transiting the EEZ with such species aboard.

§ 300.123 Certificates and permits.

(a) *Applicability*. An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Administrator.

(b) *Application for certificate/permit*. (1) An application for a permit must be submitted and signed by the vessel's owner. An application may be submitted at any time, but should be submitted to the Regional Administrator not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Administrator by October 1.

(2) An applicant must provide the following:

(i) A copy of the vessel's valid USCG certificate of documentation or, if not

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documented, a copy of its valid state registration certificate.

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner or, if the owner is a corporation or partnership, of the responsible corporate officer or general partner.

(iv) Principal port of landing of fish taken from treaty waters.

(v) Type of fishing to be conducted in treaty waters.

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

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

(c) *Issuance.* (1) The Regional Administrator will request a certificate from the Republic of Colombia if:

(i) The application is complete.

(ii) The applicant has complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Administrator's notification, the application will be considered abandoned.

(3) The Regional Administrator will issue a permit as soon as the certificate is received from the Republic of Colombia.

(d) *Duration.* A certificate and permit are valid for the calendar year for which they are issued, unless the permit is revoked, suspended, or modified under subpart D of 15 CFR part 904.

(e) *Transfer.* A certificate and permit issued under this section are not transferable or assignable. They are valid only for the fishing vessel and owner for which they are issued.

(f) *Display.* A certificate and permit issued under this section must be carried aboard the fishing vessel while it

is in treaty waters. The operator of a fishing vessel must present the certificate and permit for inspection upon request of an authorized officer or an enforcement officer of the Republic of Colombia.

(g) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

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

(i) *Replacement.* A replacement certificate or permit may be issued upon request. Such request must clearly state the reason for a replacement certificate or permit.

(j) *Change in application information.* The owner of a vessel with a permit must notify the Regional Administrator within 30 days after any change in the application information required by paragraph (b)(2) of this section. The permit is void if any change in the information is not reported within 30 days.

§ 300.124 Recordkeeping and reporting.

(a) *Arrival and departure reports.* The operator of each vessel of the United States for which a certificate and permit have been issued under § 300.123 must report by radio to the Port Captain, San Andres Island, voice radio call sign "Capitania de San Andres," the vessel's arrival in and departure from treaty waters. Radio reports must be made on 8222.0 kHz or 8276.5 kHz between 8:00 a.m. and 12 noon, local time (1300-1700, Greenwich mean time) Monday through Friday.

(b) *Catch and effort reports.* Each vessel of the United States must report its catch and effort on each trip into treaty waters to the Science and Research Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received no later than 7 days after the end of each fishing trip.

§ 300.125 Vessel identification.

(a) *Official number.* A vessel with a permit issued pursuant to § 300.123, when in treaty waters, must display its

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official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. The official number must be permanently affixed to or painted on the vessel and must be in block arabic numerals in contrasting color to the background at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair.

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

§ 300.126 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this title and the prohibited acts specified in § 300.4, it is unlawful for any person to do any of the following:

(a) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in § 300.123(a) and (f).

(b) Fail to notify the Regional Administrator of a change in application information, as specified in § 300.123(j).

(c) Fail to report a vessel's arrival in and departure from treaty waters, as required by § 300.124(a).

(d) Falsify or fail to display and maintain vessel identification, as required by § 300.125.

(e) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in § 300.127.

(f) Operate a factory vessel in treaty waters, as specified in § 300.130(a).

(g) Use a monofilament gillnet in treaty waters, as specified in § 300.130(b).

(h) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in § 300.130(c).

(i) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 300.130(d).

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(j) Possess conch smaller than the minimum size limit, as specified in § 300.131(a).

(k) Fish for or possess conch in the closed area or during the closed season, as specified in § 300.131(b) and (c).

(l) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in § 300.132(a).

(m) Possess a lobster smaller than the minimum size, as specified in § 300.132(b).

(n) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in § 300.132(a) and (b).

§ 300.127 Facilitation of enforcement.

(a) The provisions of § 600.730 of this title and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this subpart.

§ 300.128 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson-Stevens Act or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this title, to 15 CFR part 904, and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this subpart to leave treaty waters.

§ 300.129 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

§ 300.130 Vessel and gear restrictions.

(a) *Factory vessels.* Factory vessels are prohibited from operating in treaty waters.

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(b) *Monofilament gillnets.* A monofilament gillnet made from nylon or similar synthetic material are prohibited from being used in treaty waters.

(c) *Tanks and air hoses.* Autonomous or semiautonomous diving equipment (tanks or air hoses) are prohibited from being used to take aquatic biological resources in treaty waters.

(d) *Trap requirements.* A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

(e) *Poisons and explosives.* [Reserved]

§ 300.131 Conch harvest limitations.

(a) *Size limit.* The minimum size limit for possession of conch in or from treaty waters is 7.94 oz (225 g) for an uncleaned meat and 3.53 oz (100 g) for a cleaned meat.

(b) *Closed area.* The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) *Closed season.* During the period July 1 through September 30 of each year, the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

§ 300.132 Lobster harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) *Size limit.* The minimum size limit for possession of lobster in or from treaty waters is 5.5 inches (13.97 cm), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

Subpart I—United States-Canada Fisheries Enforcement

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

§ 300.140 Purpose and scope.

This subpart implements the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990 (Agreement), allowing each party to the Agreement to take appropriate measures, consistent with international law, to prevent its nationals, residents and vessels from violating those national fisheries laws and regulations of the other party. This subpart applies, except where otherwise specified in this subpart, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Magnuson-Stevens Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this subpart, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

§ 300.141 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson-Stevens Act and the Agreement, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson-Stevens Act, or the Agreement, the definition in this section applies.

Applicable Canadian fisheries law means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

Authorized officer of Canada means any fishery officer, protection officer, officer of the Royal Canadian Mounted

Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

Canadian fishing vessel means a fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principal place of business in Canada; or

(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.

Waters subject to the fisheries jurisdiction of Canada means the internal waters, territorial sea, and the zone that Canada has established, extending 200 nautical miles from its coasts, in which it exercises sovereign rights for the purpose of exploration, exploitation, conservation and management of living marine resources, to the extent recognized by the United States.

§ 300.142 Prohibitions.

The prohibitions in this section apply within waters subject to the fisheries jurisdiction of Canada and during hot pursuit therefrom by an authorized officer of Canada. It is unlawful for any national or resident of the United States, or any person on board a vessel of the United States, or the owner or operator of any such vessel, to do any of the following:

(a) Engage in fishing in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(b) Take or retain fish in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(c) Be on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, without stowing all fishing gear on board either:

(1) Below deck, or in an area where it is not normally used, such that the

gear is not readily available for fishing; or

(2) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; unless the vessel has been authorized by the Government of Canada to fish in the particular location within waters subject to the fisheries jurisdiction of Canada in which it is operating.

(d) While on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, fail to respond to any inquiry from an authorized officer of Canada regarding the vessel's name, flag state, location, route or destination, and/or the circumstances under which the vessel entered such waters.

(e) Violate the Agreement, any applicable Canadian fisheries law, or the terms or conditions of any permit, license or any other authorization granted by Canada under any such law.

(f) Fail to comply immediately with any of the enforcement and boarding procedures specified in § 300.143.

(g) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of Canada, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(h) Refuse to allow an authorized officer of Canada to board a vessel for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(i) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of Canada in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(j) Make any false statement, oral or written, to an authorized officer of Canada in response to any inquiry by that officer in connection with enforcement of any applicable Canadian fisheries law.

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(k) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this subpart such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(l) Attempt to do any of the foregoing.

§ 300.143 Facilitation of enforcement.

(a) *General.* Persons aboard fishing vessels subject to this subpart must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, to stop the vessel, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this subpart. All of the provisions of § 300.5 regarding communications, boarding, and signals apply to this subpart. For purposes of this subpart, authorized officer in § 305 means an authorized officer of the United States or Canada. (See paragraph (b) of this section for specific requirements for complying with signals and instructions issued by an authorized officer of Canada.)

(b) *Canadian signals.* In addition to signals set forth in § 300.5, persons aboard fishing vessels subject to this subpart must immediately comply with the following signals by an authorized officer of Canada.

(1) Authorized officers of Canada use the following signals to require fishing vessels to stop or heave to:

(i) The hoisting of a rectangular flag, known as the International Code Flag “L”, which is divided vertically and horizontally into quarters and colored so that:

(A) The upper quarter next to the staff and the lower quarter next to the fly are yellow; and

(B) The lower quarter next to the staff and the upper quarter next to the fly are black;

(ii) The flashing of a light to indicate the International Morse Code letter “L”, consisting of one short flash, followed by one long flash, followed by two short flashes (. — . .); or

(iii) The sounding of a horn or whistle to indicate the International Morse Code letter “L”, consisting of one short blast, followed by one long blast, followed by two short blasts (. — . .).

(2) Authorized officers of Canada use the following signals to require a fishing vessel to prepare to be boarded:

(i) The hoisting of flags representing the International Code Flag “SQ3”; or

(ii) The flashing of a light, or the sounding of a horn or whistle, to indicate the International Morse Code Signal “SQ3” (. . . — — . — . . . — —).

§ 300.144 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the Agreement or this subpart, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Magnuson-Stevens Act, part 600 of this title, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

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

§ 300.150 Purpose.

This subpart regulates U.S. nationals fishing in the Russian fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

§ 300.151 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson-Stevens Act, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2 or the Magnuson-Stevens Act, the definition in this section shall apply.

Affiliates means two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or

(2) A third party controls or has power to control both. Indicia of control include, but are not limited to,

interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.

Agreement means the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

Embassy of the Russian Federation means the Fisheries Attache of the embassy located in Washington, D.C.

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

Fishing or to fish means any activity that does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

Operator, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel's fishing operation, or both.

Owner, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel, any officer, director, manager, controlling shareholder of any entity described in this definition, any agent designated as such by any person described in this definition, and any affiliate of any person described in this definition.

Processing means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

Regional Administrator means Administrator of the Alaska Region, or a designee.

Relevant laws and regulations of the Russian Federation means those Russian laws and regulations that concern fishing for fishery resources over which Russia exercises sovereign rights or fishery management authority.

Russian and Federation mean the Russian Federation, its government, or any organ or entity of its government.

Russian continental shelf or *continental shelf of Russia* means the seabed and subsoil of the submarine areas over which, consistent with international law, Russia exercises sovereign rights.

Russian Economic Zone or *Russian EZ* means a zone of waters off the coast of Russia beyond and adjacent to the Russian territorial sea extending a distance of up to 200 nautical miles from the baseline from which the territorial sea is measured, within which, consistent with international law, Russia has sovereign rights over the fishery resources.

Russian Federation or *Russia* means the governing entity that succeeded the Union of Soviet Socialist Republics, and that is the successor party to the Agreement of May 31, 1988.

Russian fisheries, *Russian fishery resources*, or *fishery resources over which Russia exercises sovereign rights or fishery management authority* means fishery resources within the Russian EZ, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EZ or beyond any exclusive economic zone or its equivalent.

Scouting means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

Support means any operation by a vessel assisting fishing by another vessel, including—

- (1) Transferring or transporting fish or fish products; or
- (2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

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§ 300.152 Procedures.

(a) *Application for annual permits.* U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS Headquarters.

(b) *Other application information.* Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than 10 vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(c) *Review of Applications.* NMFS will review each application, and, if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) *Direct Communication.* U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so. Owners and operators should make direct contact and work with Russian industry and government authorities.

§ 300.153 Permit issuance.

(a) *Acceptance.* Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the

permit. The vessel owner is prohibited from transferring the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS Headquarters under § 300.152 within 7 calendar days of the change.

(b) *Copies.* The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS Headquarters.

(c) *Validity.* Any permit issued by the Russian Federation with respect to a vessel subject to this subpart will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in § 300.152(b)(1).

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section.

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section. The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; failure to submit to NMFS any permit copy required by paragraph (b) of this section or any other information or report required by any other provision of this subpart; or the failure to pay required permit fees.

(d) *Russian-imposed sanctions.* (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews

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promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

§ 300.154 Recordkeeping and reporting.

(a) *General.* The owner and operator of a vessel subject to this subpart are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this subpart must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) *Vessel permit abstract report.* (1) The owner and operator of a vessel subject to this subpart must submit to NMFS Headquarters a permit abstract report containing the following information:

- (i) Vessel name.
- (ii) Russian Federation permit number.
- (iii) Duration of permit (e.g., 1/1/91–12/31/91).
- (iv) Authorized areas of fishing operations in geographic coordinates.
- (v) Authorized catch quota in tons.
- (vi) Authorized fishing gear.
- (vii) Type of permit (e.g., catcher).

(2) The report must be faxed to (301) 713–2313 within 5 calendar days of receipt of the Russian permit.

(c) *Activity reports.* The owner and operator of a vessel subject to this subpart must submit to the Regional Administrator by telefax to (907) 586–7313, the following reports:

(1) *Depart Report* (Action code DEPART). At least 24 hours before the vessel departs from the EEZ for the Russian EZ, NMFS must receive the following information:

(i) The date (month and day), and time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will depart the EEZ for the Russian EZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the

vessel at the time it will depart the EEZ.

(2) *Return Report* (Action code RETURN). At least 24 hours before a vessel that has been in the Russian EZ enters the EEZ, NMFS must receive the following information:

(i) The date (month and day), time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will enter the EEZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EZ, U.S. EEZ, or other) in which such fish products were harvested or received.

(3) All reports must specify: The appropriate action code (“DEPART” or “RETURN”); the vessel’s name and international radio call sign (IRCS); the sender’s name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. A list of species and product codes may be obtained from the Regional Administrator.

(d) *Recordkeeping.* The owner and operator of a vessel subject to this subpart must retain all copies of all reports required by this subpart on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records on board the vessel.

[61 FR 35550, July 5, 1996, as amended at 76 FR 59305, Sept. 26, 2011]

§ 300.155 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in § 300.153(c) in order to fish for Russian fishery resources.

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(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Russian law.* U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) *Protection of marine mammals.* U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of, and any person aboard, any U.S. vessel subject to this subpart, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this subpart must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of its relevant laws and regulations.

(4) The operator of, and any person aboard, any U.S. vessel subject to this

subpart must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing records, and catch for purposes of enforcing the Magnuson-Stevens Act, the Agreement, and this subpart.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EZ or for Russian fishery resources to which a Russian observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer.

(2) Provide to the observer, at no cost to the observer or the Russian Federation, the courtesies and accommodations provided to ship's officers.

(3) Cooperate with the observer in the conduct of his or her official duties.

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

§ 300.156 Prohibited acts.

In addition to the prohibited acts specified at § 300.4, it shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation.

(b) To violate the provisions, conditions, and restrictions of an applicable permit.

(c) To violate the relevant laws and regulations of Russia.

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 300.155 (c).

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 300.155 (d).

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this subpart for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation.

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(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation.

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation.

(i) To refuse or fail to allow a Russian observer to board a vessel subject to this subpart while fishing in the Russian EZ, or for Russian fishery resources.

(j) To fail to provide to a Russian observer aboard a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship's officers.

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this subpart.

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel.

(m) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson-Stevens Act, or this subpart.

(n) To enter the Russian EZ to fish unless a permit application has been submitted through NMFS to the competent authorities of the Russian Federation by the U.S. Department of State for such vessel as provided in this subpart.

(o) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this subpart without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel.

(p) To falsify, or fail to report to NMFS, any change in the information contained in a permit application sub-

ject to this subpart within 7 calendar days of such change.

(q) To attempt to do, cause to be done, or aid and abet in doing, any of the foregoing.

(r) To violate any other provision of this subpart.

§ 300.157 Penalties.

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of § 300.156 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson-Stevens Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

Subpart K—Transportation and Labeling of Fish or Wildlife

AUTHORITY: 16 U.S.C. 3371–3378.

§ 300.160 Requirement for marking of containers or packages.

Except as otherwise provided in this subpart, all persons are prohibited from importing, exporting, or transporting in interstate commerce any container or package containing any fish or wildlife (including shellfish) unless each container or package is conspicuously marked on the outside with both the name and address of the shipper and consignee and an accurate list of its contents by species and number of each species.

§ 300.161 Alternatives and exceptions.

(a) The requirements of § 300.160 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package containing fish or wildlife with the word “fish” or “wildlife” as appropriate for its contents, or with the common name of its contents by species, and

(ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment that accurately states the name and address of the shipper and consignee, states the total number of packages or containers

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in the shipment, and for each species in the shipment specifies: The common name that identifies the species (examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer); and the number of that species (or other appropriate measure of quantity such as gross or net weight). The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner that makes it readily accessible for inspection; or

(2) Affixing the shipper's wildlife import/export license number preceded by "FWS" on the outside of each container or package containing fish or wildlife if the shipper has a valid wildlife import/export license issued under authority of part 14 of this title. For each shipment marked in accordance with this paragraph (a)(2), the records maintained under §14.93(d) of this title must include a copy of the invoice, packing list, bill of lading, or other similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section, provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section; or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of §300.160 of chapter III of this title do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and

karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pursuant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.

Subpart L—Pacific Albacore Tuna Fisheries

AUTHORITY: Sec. 401, Pub. L. 108-219, 118 Stat. 616 (16 U.S.C. 1821 note).

SOURCE: 69 FR 31535, June 4, 2004, unless otherwise noted.

§ 300.170 Purpose and scope.

The regulations in this subpart govern fishing by U.S. vessels in waters under the fisheries jurisdiction of Canada pursuant to the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Regulations governing fishing by Canadian vessels in waters under the fisheries jurisdiction of the United States pursuant to this Treaty as amended in 2002 are found at §600.530 of chapter VI of this title.

§ 300.171 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and §600.10 of Chapter VI of this title, the terms used in this subpart have the following meanings:

Fishing under the Treaty as amended in 2002 means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of Canada seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard,

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Suite 4200, Long Beach, CA 90802-4213, or a designee.

Reporting Office means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

Treaty means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

§ 300.172 Vessel list.

The “vessel list” is the list of U.S. vessels that are authorized to fish under the Treaty as amended in 2002. Only a vessel on the list for at least 7 days may engage in fishing in Canadian waters under the Treaty as amended in 2002. The owner of any U.S. vessel that wishes to be eligible to fish for albacore tuna under the Treaty as amended in 2002 must provide the Regional Administrator or his designee with the vessel name, the owner’s name and address, phone number where the owner can be reached, the USCG documentation number (or state registration number if not documented), and vessel operator (if different from the owner) and his or her address and phone number. On the date that NMFS receives a request that includes all the required information, NMFS will place the vessel on the annual vessel list. NMFS will notify fishermen by a confirmation letter or email of the date the vessel was placed on the list. Because the vessel list will revert to zero vessels on December 31 of each year, the required information must be provided in the manner specified on an annual basis.

[72 FR 19123, Apr. 17, 2007]

§ 300.173 Vessel identification.

Each U.S. vessel fishing under the Treaty must be marked for identification purposes, as follows:

(a) A vessel used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with the requirements at §§ 300.14 and 300.217.

(b) A vessel not used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with either:

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(1) Sections 300.14 and 300.217, or

(2) The vessel’s name and U.S. Coast Guard Documentation number (or if not documented, the state registration number) followed by the letter U must be prominently displayed where they are clearly visible both from the air and from a surface vessel. Numerals and the letter U must meet the size requirements of § 660.704 of this title. Markings must be legible and of a color that contrasts with the background.

[76 FR 73520, Nov. 29, 2011]

§ 300.174 Logbook reports.

The owner of any U.S. vessel that fishes for albacore tuna in Canadian waters under the Treaty as amended in 2002 must maintain and submit to the Regional Administrator a logbook of catch and effort of such fishing. The logbook form will be provided to the vessel owner as soon as practicable after the request to be placed on the list of vessels. The logbook must be submitted to the Regional Administrator within 15 days of the end of a trip, regardless of whether the trip ends by reentry to U.S. waters or entry to Canada’s territorial sea, other Canadian waters in which fishing is not permitted, or a Canadian port. If the departure is due to exit to the high seas, the vessel operator must submit the logbook within 7 days of its next landing.

§ 300.175 Hail-in and hail-out reports.

(a) The operator of any U.S. vessel that wishes to engage in fishing in waters under the fisheries jurisdiction of Canada must file a hail-in report to the Reporting Office at least 24 hours prior to engaging in fishing in such waters.

(b) The operator of a U.S. vessel that has been fishing under the Treaty as amended in 2002 must file a hail-out report to the Reporting Office within 24 hours of departing waters under the fisheries jurisdiction of Canada.

§ 300.176 Prohibitions.

It is prohibited for the owner or operator of a U.S. fishing vessel to:

(a) Engage in fishing in waters under the fisheries jurisdiction of Canada if:

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(1) The vessel has not been on the list of fisheries pursuant to § 300.172 for at least 7 days;

(2) The vessel is not clearly marked as required under § 300.173;

(3) The vessel operator has not filed a hail-in report with the Reporting Office as required under § 300.175(a); or

(4) The Regional Administrator has announced that the U.S. limit on fishing under the Treaty as amended in 2002 has been reached.

(b) Fail to maintain and submit log-book records of catch and effort statistics as required under § 300.174;

(c) Fail to report an exit from waters under the fisheries jurisdiction of Canada as required by § 300.175(b).

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

AUTHORITY: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

SOURCE: 69 FR 67277, Nov. 17, 2004, unless otherwise noted.

§ 300.180 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), Tuna Conventions Act of 1950, and Magnuson-Stevens Act. The regulations implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean and of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean, so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 300.181 Definitions.

Atlantic bluefin tuna means the species *Thunnus thynnus* found in the Atlantic Ocean.

Automated Commercial Environment (ACE) has the same meaning as that term is defined in § 300.321 of this part.

Automated Export System (AES) has the same meaning as that term is defined in § 300.321 of this part.

BCD tag means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a BCD or eBCD.

Bigeye tuna means the species *Thunnus obesus* found in any ocean area.

Bluefin Tuna Catch Document (BCD) means a bluefin tuna catch document issued by a nation implementing the ICCAT bluefin tuna catch documentation program.

BSD tag means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a bluefin tuna statistical document (BSD).

CBP means U.S. Customs and Border Protection, Department of Homeland Security.

CCSBT means the Commission for the Conservation of Southern Bluefin Tuna established pursuant to the Convention for the Conservation of Southern Bluefin Tuna.

Consignment document means either an ICCAT eBCD or paper BCD issued by a nation to comply with the ICCAT bluefin tuna catch documentation program consistent with ICCAT recommendations; or an ICCAT, IATTC, IOTC, or CCSBT statistical document or a statistical document issued by a nation to comply with such statistical document programs.

Consignment documentation programs means the ICCAT, IOTC, IATTC or CCSBT catch document or statistical document programs.

Customs territory of the United States has the same meaning as in 19 CFR 101.1 and includes only the States, the District of Columbia, and Puerto Rico.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna sold to a dealer permitted under § 635.4 of this title as required under § 635.5(b) of this title.

Document Imaging System (DIS) means the system established by CBP to receive image files of paper documents in ACE or AES and associate the image files with specific trade transactions.

eBCD means an electronic bluefin tuna catch document (eBCD) generated by the ICCAT eBCD system to track bluefin tuna catch and trade as specified in ICCAT recommendations.

eBCD system is the ICCAT electronic system for creating, editing, and transmitting ICCAT catch and trade documentation for bluefin tuna as specified in ICCAT recommendations and required in these regulations.

Entered for consumption has the same meaning as in 19 CFR 141.0a(f) and generally refers to the filing of an entry summary for consumption with customs authorities, in proper form, with estimated duties attached.

Entry for consumption, for purposes of this subpart, has the same meaning as entry for consumption, withdrawal from warehouse for consumption, or entry for consumption of merchandise from a foreign trade zone, as provided under 19 CFR parts 101.1, 141, 144, and 146. For purposes of this subpart, “entry for consumption” generally means an import into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, for domestic use, that is classified for customs purposes in the “consumption” category (entry type codes 00–08) or withdrawal from warehouse or foreign trade zone for consumption category (entry type codes 30–34 and 38). For purposes of this subpart, HMS destined from one foreign country to another, which transits the Customs territory of the United States or the separate customs territory of a U.S. insular possession, and is not classified as an entry for consumption upon release from CBP or other customs custody, is not an entry for consumption under this definition.

Entry number, for purposes of this subpart, means the unique number/identifier assigned by customs authorities for each entry into a customs territory. For CBP, the entry number is assigned at the time of filing an entry summary (CBP Form 7501 or equivalent electronic filing) for entries into the Customs territory of the United States.

Export, for purposes of this subpart, means to effect exportation.

Exportation has the same general meaning as 19 CFR 101.1 and generally refers to a severance of goods from the

mass of things belonging to one country with the intention of uniting them to the mass of things belonging to some foreign country. For purposes of this subpart, a shipment between the United States and its insular possessions is not an export.

Exporter, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in part 30 of title 15 of the CFR. An exporter is subject to the requirements of this subpart, even if exports are exempt from statistical reporting requirements under part 30 of title 15 of the CFR.

Finlet means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

Fish or fish products regulated under this subpart means bluefin tuna, frozen bigeye tuna, southern bluefin tuna and swordfish and all such products of these species, except parts other than meat (e.g., heads, eyes, roe, guts, and tails), and shark fins.

IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

ICCAT means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States. Import, for purposes of this subpart, does not include any activity described in the previous sentence with respect to fish caught in the exclusive economic zone or by a vessel of the United States. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice-versa, are not considered imports.

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Importer, for purposes of this subpart, means the principal party responsible for the import of product into a country. For imports into the United States, and for purposes of this subpart, “importer” means the consignee as identified on entry documentation or any authorized, equivalent electronic medium required for release of shipments from the customs authority of the United States or the separate customs territory of a U.S. insular possession. If a consignee is not declared, then the importer of record is considered to be the consignee.

Insular possession of the United States or U.S. insular possession, for purposes of this subpart, means the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and other possessions listed under 19 CFR 7.2, that are outside the customs territory of the United States.

Intermediate country means a country that exports to another country HMS previously imported as an entry for consumption by that nation. A shipment of HMS through a country on a through bill of lading, or in another manner that does not enter the shipment into that country as an entry for consumption, does not make that country an intermediate country under this definition.

International Fisheries Trade Permit (IFTP) or trade permit means the permit issued by NMFS under § 300.322.

IOTC means the Indian Ocean Tuna Commission established pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission approved by the Food and Agriculture Organization (FAO) Council of the United Nations.

Pacific bluefin tuna means the species *Thunnus orientalis* found in the Pacific Ocean.

Permit holder, for purposes of this subpart, means, unless otherwise specified, a person who is required to obtain an International Fisheries Trade Permit (IFTP) under § 300.322.

Re-export, for purposes of this subpart, means the export of goods that were previously entered for consumption into the customs territory of a country.

Required data set has the same meaning as § 300.321 (see definition of “Documentation and data sets required”).

RFMO, as defined under this subpart, means regional fishery management organization, including CCSBT, IATTC, ICCAT, or IOTC.

Separate customs territory of a U.S. insular possession means the customs territory of a U.S. insular possession when that possession’s customs territory is not a part of the Customs territory of the United States.

Shark fin, for purposes of this subpart, means any fin removed from a shark, which is an animal of the Linnaean taxonomic superorder Selachimorpha, subclass Elasmobranchii, class Chondrichthyes.

Southern bluefin tuna means the species *Thunnus maccoyii* found in any ocean area.

Statistical document means an ICCAT, IATTC, IOTC, or CCSBT statistical document, or a statistical document issued by a nation to comply with such statistical document programs.

Statistical document program means either the ICCAT, IOTC, IATTC or CCSBT statistical document program.

Swordfish means the species *Xiphias gladius* that is found in any ocean area.

Tag means either a dealer tag or a BCD tag.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31385, June 2, 2008; 81 FR 18799, Apr. 1, 2016; 81 FR 51134, Aug. 3, 2016]

§ 300.182 International fisheries trade permit.

An importer, entering for consumption any fish or fish products regulated under this subpart, harvested from any ocean area, into the United States, or an exporter exporting or re-exporting such product, must possess a valid International Fisheries Trade Permit (IFTP) issued under § 300.322.

[81 FR 51134, Aug. 3, 2016]

§ 300.183 Permit holder reporting and recordkeeping requirements.

(a) *Biweekly reports*. Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under § 300.322 must submit to NMFS, on forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of

fish and fish products regulated under this subpart, except shark fins.

(1) The report required to be submitted under this paragraph (a) must be received within 10 days after the end of each biweekly reporting period in which fish or fish products regulated under this subpart except shark fins were entered for consumption, exported, or re-exported. The bi-weekly reporting periods are the first day to the 15th day of each month, and the 16th day to the last day of each month.

(2) Each report must specify accurately and completely the requested information for each consignment of fish or fish products regulated under this subpart, except shark fins, that is entered for consumption, exported, or re-exported.

(3) A biweekly report is not required for export consignments of bluefin tuna when the information required on the biweekly report has been previously supplied on a biweekly report submitted under § 635.5(b)(2)(i)(B) of this title. The person required to obtain a trade permit under § 300.322 must retain, at his/her principal place of business, a copy of the biweekly report which includes the required information and is submitted under § 635.5(b)(2)(i)(B) of this title, for a period of 2 years from the date on which each report was submitted to NMFS.

(b) *Recordkeeping.* Any person trading fish and fish products regulated under this subpart and required to submit biweekly reports under paragraph (a) of this section must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) *Other requirements.* Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under § 300.322 is also subject to the reporting and recordkeeping requirements identified in § 300.185.

(d) *Inspection.* Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this sub-

part, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, and any other records or reports made, retained, or submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect any fish or fish products regulated under this subpart, and inspect and copy any import export, and re-export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person trading and required to obtain a trade permit under § 300.322, or anyone responsible for importing, exporting, re-exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

(e) *Applicability of reporting and recordkeeping requirements.* Reporting and recordkeeping requirements in this subpart apply to any person engaging in international trade regardless of whether a trade permit has been issued to that person.

[73 FR 31385, June 2, 2008, as amended at 81 FR 51134, Aug. 3, 2016]

§ 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

(a) Except as noted in paragraphs (b) and (c) of this section, the following fish or fish products are subject to the documentation requirements of this subpart, regardless of ocean area of catch, and must be reported under the appropriate heading or subheading numbers from the Harmonized Tariff Schedule of the United States (HTS):

- (1) Bluefin tuna,
- (2) Southern bluefin tuna,
- (3) Frozen bigeye tuna,
- (4) Swordfish, and
- (5) Shark fins.

(b) For bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, fish parts other than meat (*e.g.*, heads, eyes, roe, guts, and tails) may be imported without the documentation required under this subpart.

(c) Bigeye tuna caught by purse seiners or pole and line (bait) vessels and destined for canneries within the

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United States, including all U.S. commonwealths, territories, and possessions, may be imported without the documentation required under this subpart.

[81 FR 51135, Aug. 3, 2016]

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) *Imports*—(1) *Applicability of requirements.* The documentation requirements in paragraph (a)(2) of this section apply to all imports of fish or fish products regulated under this subpart, into the Customs territory of the United States, except shark fins, or except when entered as a product of an American fishery landed overseas (HTS heading 9815). For insular possessions with customs territories separate from the Customs territory of the United States, documentation requirements in paragraph (a)(2) of this section apply only to entries for consumption. The reporting requirements of paragraph (a)(3) of this section do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) *Documentation requirements.* (i) Except for shark fins, all fish or fish products regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (*e.g.*, electronic filing via ACE or other documentation required by the port director) be accompanied by an original, complete, accurate, approved and properly validated, species-specific consignment document. An image of such document and the required data set must be filed electronically with CBP via ACE.

(ii) *Bluefin tuna:*

(A) Imports that were re-exported from another nation must also be accompanied by an original, complete, accurate, approved and properly validated, species-specific re-export certificate.

(1) For Atlantic bluefin tuna, this requirement must be satisfied by the U.S. importer through electronic receipt and completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number or re-export certificate number, as applicable, and the importer trade permit number would suffice as an import filing, without need to submit any forms via DIS in ACE.

(2) For bluefin tuna harvested from other than the Atlantic Ocean, or for Atlantic Bluefin tuna entered pursuant to a notified exception under (a)(2)(ii)(A)(1), an image of the original paper re-export certificate and the supporting consignment documents must be submitted to CBP via the ACE DIS.

(B) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final import destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(iii) Fish or fish products regulated under this subpart other than bluefin tuna and shark fins:

(A) Imports that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, accurate, valid, approved and properly validated, species-specific re-export certificate. An image of such document, an image of the original import document,

and the required data set must be filed electronically with CBP via ACE.

(B) Imports that have been previously re-exported from another nation must have the intermediate importer's certification of the original statistical document completed.

(iv) Consignment documents must be validated as specified in § 300.187 by an authorized government official of the flag country whose vessel caught the fish (regardless of where the fish are first landed). Re-export certificates must be validated by an authorized government official of the re-exporting country. For electronically generated Atlantic bluefin tuna catch documents, validation must be electronic using the ICCAT eBCD system.

(v) A permit holder may not accept an import without the completed consignment document or re-export certificate as described in paragraphs (a)(2)(i) through (iv) of this section.

(vi) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

(A) For Atlantic bluefin tuna, this information must be provided electronically in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice.

(B) For non-Atlantic bluefin tuna, this information must be provided on the original paper consignment document that accompanied the consignment.

(3) *Reporting requirements.* (i) For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit an image of the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section to CBP electronically through the ACE DIS.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as

directed in paragraph (a)(2)(vi)(A) of this section, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number or the re-export certificate number, as applicable, and the importer trade permit number would suffice as an import filing, without need to submit any forms via DIS in ACE.

(b) *Exports*—(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph (b) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that possession. This paragraph (b) also applies to products of American fisheries landed overseas.

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section, and electronically file an image of such documentation and the required data set with CBP via AES. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(i) For Atlantic bluefin tuna, this requirement must be satisfied by electronic completion of a consignment document in the ICCAT eBCD system, unless NMFS provides otherwise

through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing, without need to submit any forms in AES via DIS.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by completion of a paper consignment document, and electronic filing of an image of such documentation and the required data set with CBP via AES.

(3) *Reporting requirements.* (i) A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination and must electronically file an image of such documentation and the required data set with CBP via AES.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the eBCD system as directed in paragraph (b)(2)(i) of this section, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing without need to submit any forms in AES via DIS.

(c) *Re-exports*—(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph (c) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were previously entered for consumption into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, through filing the documentation specified in paragraph (a) of this section. The requirements of this paragraph (c) do not apply to fish or fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and which are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) *Documentation requirements.* (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment documentation that accompanied the import consignment or a copy of that documentation, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry for the previously imported consignment. An electronic image of these documents and the required data set must be filed electronically with CBP via AES at the time of export.

(A) For Atlantic bluefin tuna, these requirements must be satisfied by electronic completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as a re-export filing, without need to submit any forms in AES via DIS.

(B) For non-Atlantic bluefin tuna, these requirements must be satisfied by completion of a paper re-export certificate, and electronic filing of an image of such documentation and the required data set with CBP via AES.

(ii) If a consignment of fish or fish products regulated under this subpart, except bluefin tuna or shark fins, that

was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-consignments or consolidated with other consignments or parts thereof, for each such re-export consignment, a permit holder must complete the intermediate importer's certification on the original consignment document and note the entry number previously issued by CBP for the consignment at the top of the document. Such re-exports do not need a re-export certificate and the re-export does not require validation. An electronic image of the consignment document with the completed intermediate importer's certification and the required data set must be filed electronically with CBP via AES at the time of re-export.

(iii) Re-export certificates must be validated, as specified in §300.187, by NMFS or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment. Electronic re-export certificates created for Atlantic bluefin tuna using the ICCAT eBCD system will be validated electronically.

(3) *Reporting requirements.* (i) For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to the shipper to accompany the consignment of such products to their re-export destination, and an image of such documentation and the required data set must be filed electronically with CBP via AES.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (c)(2)(i)(A) of this section, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an ex-

port filing, without need to submit any forms in AES via DIS.

(d) *Document completion.* To be deemed complete, a consignment document or re-export certificate must be filled out according to the corresponding instructions for each document with all requested information provided.

(e) *Recordkeeping.* A permit holder must retain at his or her principal place of business, a copy of each consignment document and re-export certificate required to be submitted to NMFS pursuant to this section, and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(f) *Inspection.* Any person responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, including permit holders, consignees, customs brokers, freight forwarders, and importers of record, shall be subject to the inspection provisions at §300.183(d).

[69 FR 67277, Nov. 17, 2004, as amended at 71 FR 58163, Oct. 2, 2006; 73 FR 31386, June 2, 2008; 74 FR 66586, Dec. 16, 2009; 81 FR 18799, Apr. 1, 2016; 81 FR 51135, Aug. 3, 2016]

§300.186 Completed and approved documents.

(a) *NMFS-approved forms.* A NMFS-approved consignment document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

(b) *Nationally approved forms from other countries.* A nationally approved form from another country may be used for exports to the United States if that document strictly conforms to the information requirements and format of the applicable RFMO documents. An approved consignment document or re-export certificate for use in countries without a nationally approved form to accompany consignments to the United States may be obtained from the following websites, as appropriate:

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www.iccat.org, *www.iattc.org,*
www.ccsbt.org, or *www.iotc.org.*

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008; 81 FR 18800, Apr. 1, 2016]

§ 300.187 Validation requirements.

(a) *Imports.* The approved consignment document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable RFMO recommendation. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate customs officials. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) *Exports.* The approved consignment document accompanying any export of fish or fish products regulated under this subpart must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(c) *Re-exports.* The approved re-export certificate accompanying any re-export of fish or fish products regulated under this subpart, as required under § 300.185(c), must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

(d) *Validation waiver.* Any waiver of government validation will be consistent with applicable RFMO recommendations concerning validation of consignment documents and re-export certificates. If authorized, such waiver of government validation may include exemptions from government validation for Pacific bluefin tuna with individual BCD tags affixed pursuant to paragraph (f) of this section or for Atlantic bluefin tuna with tags affixed pursuant to § 635.5(b) of this title. Waivers will be specified on consignment documents and re-export certificates or accompanying instructions, or in a letter to permit holders from NMFS.

(e) *Authorization for non-NMFS validation.* An official from an organization or government agency seeking authorization to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing, to NMFS, at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated; list the names, addresses, and telephone/fax numbers of individuals to perform validation; procedures to be used to notify NMFS of validations; and an example of the stamp or seal to be applied to the consignment document or re-export certificate. NMFS, upon finding the applicant capable of verifying the information required on the consignment document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States. The effective date of such authorization will be delayed as necessary for NMFS to notify the appropriate RFMO of other officials authorized to validate consignment document or re-export certificates. Non-government organizations given authorization to validate consignment documents or re-export certificates must renew such authorization on a yearly basis.

(f) *BCD tags.* The requirements of this paragraph apply to Pacific bluefin tuna. Requirements for tagging Atlantic bluefin tuna are specified in § 635.5.

(1) *Issuance.* NMFS will issue numbered BCD tags for use on Pacific bluefin tuna upon request to each permit holder.

(2) *Transfer.* BCD tags for use on Pacific bluefin tuna issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

(3) *Affixing BCD tags.* At the discretion of permit holders, a tag issued under this section may be affixed to each Pacific bluefin tuna purchased or received by the permit holder. If so tagged, the tag must be affixed to the

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tuna between the fifth dorsal finlet and the keel.

(4) *Removal of tags.* A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the tuna until it is cut into portions. If the bluefin tuna or bluefin tuna parts are subsequently packaged for transport for domestic commercial use or for export, the number of each dealer tag or BCD tag must be written legibly and indelibly on the outside of any package containing the bluefin tuna or bluefin tuna parts. Such tag number also must be recorded on any document accompanying the consignment of bluefin tuna or bluefin tuna parts for commercial use or export.

(5) *Labeling.* The number of a BCD tag affixed to each Pacific bluefin tuna under this section must be recorded on NMFS reports required by § 300.183, on any documents accompanying the consignment of Pacific bluefin tuna for domestic commercial use or export as indicated in § 300.185, and on any additional documents that accompany the consignment (e.g., bill of lading, customs manifest, etc.) of the tuna for commercial use or for export.

(6) *Reuse.* BCD tags issued under this section are separately numbered and may be used only once, one tag per Pacific bluefin tuna, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a BCD tag and associated number may not be reused.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008; 81 FR 18801, Apr. 1, 2016]

§ 300.188 Ports of entry.

NMFS shall monitor the importation of fish or fish products regulated under this subpart into the United States. If NMFS determines that the diversity of handling practices at certain ports at which fish or fish products regulated under this subpart are being imported into the United States allows for circumvention of the consignment document requirement, NMFS may undertake a rulemaking to designate, after consultation with the CBP, those ports at which fish or fish products regulated under this subpart from any ocean area

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may be imported into the United States.

[73 FR 31388, June 2, 2008]

§ 300.189 Prohibitions.

In addition to the prohibitions specified in § 300.4, and §§ 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, the Atlantic Tunas Convention Act, the Magnuson-Stevens Act, the Tuna Conventions Act of 1950, or any other rules promulgated under those Acts. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Falsify information required on an application for a permit submitted under § 300.322.

(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish product regulated under this subpart without a valid trade permit issued under § 300.322.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder's place of business, or alter any such permit as specified in § 300.322.

(d) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 300.183 or § 300.185.

(e) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 300.183 or § 300.185.

(f) Fail to comply with the documentation requirements as specified in § 300.185, § 300.186 or § 300.187, for fish or fish products regulated under this subpart that are imported, entered for consumption, exported, or re-exported.

(g) Fail to comply with the documentation requirements as specified in § 300.186, for the importation, entry for consumption, exportation, or re-exportation of an Atlantic swordfish, or part thereof, that is less than the minimum size.

(h) Validate consignment documents or re-export certificates without authorization as specified in § 300.187.

(i) Validate consignment documents or re-export certificates as provided for in § 300.187 with false information.

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(j) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BCD tag program before removal is allowed under §300.187; fail to write the tag number on the shipping package or container as specified in §300.187; or reuse any NMFS-issued numbered tag affixed to any Pacific bluefin tuna, or any tag affixed to a bluefin tuna imported from a country with a BCD tag program, or any tag number previously written on a shipping package or container as prescribed by §300.187.

(k) Import, or attempt to import, any fish or fish product regulated under this subpart in a manner inconsistent with any ports of entry designated by NMFS as authorized by §300.188.

(l) Ship, transport, purchase, sell, offer for sale, import, enter for consumption, export, re-export, or have in custody, possession, or control any fish or fish product regulated under this subpart that was imported, entered for consumption, exported, or re-exported contrary to this subpart.

(m) Fail to electronically file via ACE a validated consignment document and the required data set for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to §300.322 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart, except shark fins, without an original, complete, accurate, approved and properly validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter's certification completed.

[61 FR 35550, July 5, 1996, as amended at 73 FR 31388, June 2, 2008; 81 FR 51136, Aug. 3, 2016]

Subpart N—Identification and Certification of Nations

AUTHORITY: 16 U.S.C. 1826d *et seq.*

SOURCE: 76 FR 2024, Jan. 12, 2011, unless otherwise noted.

§ 300.200 Purpose and scope.

The purpose of this subpart is to implement the requirements in the High Seas Driftnet Fishing Moratorium Protection Act ("Moratorium Protection Act") to identify and certify nations whose vessels engaged in illegal, unreported, or unregulated fishing; whose fishing activities result in bycatch of protected living marine resources; or whose vessels engaged in fishing activities or practices on the high seas that target or incidentally catch sharks where the nation has not adopted a regulatory program for the conservation of sharks, comparable in effectiveness to that of the United States, taking into account different conditions. This language applies to vessels entitled to fly the flag of the nation in question. Where the Secretary of Commerce determines that an identified nation has not taken the necessary actions to warrant receipt of a positive certification, the Secretary of Commerce may recommend to the President that the United States prohibit the importation of certain fish and fish products from the identified nation or other measures. The Secretary of Commerce will recommend to the President appropriate measures, including trade restrictive measures, to be taken against identified nations that have not received a positive certification, to address the fishing activities or practices for which such nations were identified in the biennial report. The Secretary of Commerce will make such a recommendation on a case-by-case basis in accordance with international obligations, including the World Trade Organization (WTO) Agreement. The Moratorium Protection Act also authorizes cooperation and assistance to nations to take action to combat illegal, unreported, or unregulated fishing, reduce bycatch of protected living marine resources, and achieve shark conservation.

[78 FR 3342, Jan. 16, 2013]

§ 300.201 Definitions.

For the purposes of the Moratorium Protection Act:

Bycatch means: the incidental or discarded catch of protected living marine resources or entanglement of such resources with fishing gear.

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

(1) Fishing; or

(2) Any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing, bunkering or purchasing catch, or aiding or assisting one or more vessels at sea in the performance of such activity.

Illegal, unreported, or unregulated (IUU) fishing means:

(1) In the case of parties to an international fishery management agreement to which the United States is a party, fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including but not limited to catch limits or quotas, capacity restrictions, bycatch reduction requirements, shark conservation measures, and data reporting;

(2) In the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement;

(3) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures, or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or,

(4) Fishing activity that has a significant adverse impact on seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

(5) Fishing activities by foreign flagged vessels in U.S. waters without authorization of the United States.

International agreement means: an agreement between two or more States, agencies of two or more States, or intergovernmental organizations which is legally binding and governed by international law.

International fishery management agreement means: any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.

International fishery management organization means: an international organization established by any bilateral or multilateral treaty, convention, or agreement for the conservation and management of fish.

Protected living marine resources (PLMRs) means: non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but they do not include species, except sharks, that are managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or by any international fishery management agreement.

[76 FR 2024, Jan. 12, 2011, as amended at 78 FR 3342, Jan. 16, 2013]

§ 300.202 Identification and certification of nations engaged in illegal, unreported, or unregulated fishing activities.

(a) *Procedures to identify nations whose fishing vessels are engaged in IUU fishing*

(1) NMFS will identify and list, in a biennial report to Congress, nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing.

(2) When determining whether to identify a nation as having fishing vessels engaged in IUU fishing, NMFS will take into account all relevant matters, including but not limited to the history, nature, circumstances, extent, duration, and gravity of the IUU fishing activity in question, and any measures that the nation has implemented to address the IUU fishing activity.

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NMFS will also take into account whether an international fishery management organization exists with a mandate to regulate the fishery in which the IUU activity in question takes place. If such an organization exists, NMFS will consider whether the relevant international fishery management organization has adopted measures that are effective at addressing the IUU fishing activity in question and, if the nation whose fishing vessels are engaged, or have been engaged, in IUU fishing is a party to, or maintains cooperating status with, the organization. NMFS will also take into account any actions taken or on-going proceedings by the United States and/or flag State to address the IUU fishing activity of concern as well as the effectiveness of such actions.

(b) *Notification of nations identified as having fishing vessels engaged in IUU fishing.* Upon identifying a nation whose vessels have been engaged in IUU fishing activities in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Notify nations that have been identified in the biennial report as having fishing vessels that are currently engaged, or were engaged at any point during the preceding two calendar years, in IUU fishing activities;

(2) Notify identified nations of the requirements under the Moratorium Protection Act and this subpart; and

(3) Notify any relevant international fishery management organization of actions taken by the United States to identify nations whose fishing vessels are engaged in IUU fishing and initiate consultations with such nations.

(c) *Consultation with nations identified as having fishing vessels engaged in IUU fishing.* Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in cooperation with the Secretary of State, will initiate consultations with nations that have been identified in the biennial report for the purpose of encouraging such nations to take appropriate corrective action with respect to

the IUU fishing activities described in the biennial report.

(d) *Procedures to certify nations identified as having fishing vessels engaged in IUU fishing.* Each nation that is identified as having fishing vessels engaged in IUU fishing shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. A positive certification indicates that a nation has taken appropriate corrective action to address the IUU fishing activity described in the biennial report. A negative certification indicates that a nation has not taken appropriate corrective action.

(1) The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report;

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report;

(iii) Whether the United States has taken enforcement action to effectively address the IUU fishing activity of the identified nation described in the biennial report; and

(iv) Whether the identified nation has cooperated in any action taken by the United States to address the IUU fishing activity described in the biennial report.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations and an opportunity to support and/or refute the preliminary determinations and communicate any

corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

[76 FR 2024, Jan. 12, 2011, as amended at 78 FR 3343, Jan. 16, 2013]

§ 300.203 Identification and certification of nations engaged in bycatch of protected living marine resources.

(1) NMFS will identify and list, in the biennial report to Congress nations—

(i) whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any national jurisdiction that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States;

(ii) if the nation is a party to or maintains cooperating status with the relevant international organization with jurisdiction over the conservation and protection of the relevant PLMRs, or a relevant international or regional fishery organization, and the organization has not adopted measures to effectively end or reduce bycatch of such species; and

(iii) the nation has not implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements, taking into account different conditions that could bear on the feasibility and efficacy of comparable measures.

(2) When determining whether to identify nations as having fishing vessels engaged in PLMR bycatch, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

(3) NMFS will also examine whether the nation has implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements. In considering whether a nation has implemented measures that are comparable

in effectiveness to those of the United States, NMFS will evaluate if different conditions exist that could bear on the feasibility and efficiency of such measures to end or reduce bycatch of the pertinent PLMRs.

(b) *Notification of nations identified as having fishing vessels engaged in PLMR bycatch.* Upon identifying a nation whose vessels have been engaged in bycatch of PLMRs in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the Moratorium Protection Act and this subpart.

(c) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for protected living marine resources that is comparable in effectiveness to that of the United States, taking into account different conditions, and establishment of a management plan that assists in the collection of species-specific data;

(2) Seek to enter into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

(3) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

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(d) *International cooperation and assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive certification under paragraph(e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) *Procedures to certify nations identified as having fishing vessels engaged in PLMR bycatch.* (1) Each nation that is identified as having fishing vessels engaged in PLMR bycatch shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(i) Such nation has provided evidence documenting its adoption of a regulatory program to end or reduce bycatch of such PLMRs that is comparable in effectiveness to regulatory measures required under U.S. law to address bycatch in the relevant fisheries, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and which, in the case of an identified nation with fishing vessels engaged in pelagic longline fishing, includes the mandatory use of circle hooks, careful handling and release equipment, training and observer programs; and

(ii) Such nation has established a management plan that will assist in

the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs.

(2) Nations will be notified prior to a formal certification determination and will be provided with an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

[76 FR 2024, Jan. 12, 2011, as amended at 78 FR 3343, Jan. 16, 2013]

§ 300.204 Identification and certification of nations whose vessels are engaged in shark catch.

(a) *Procedures to identify nations if fishing vessels of that nation are engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks during the preceding calendar year.* (1) NMFS will identify and list in the biennial report to Congress nations—

(i) Whose fishing vessels are engaged, or have been engaged during the calendar year prior to publication of the biennial report to Congress, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

(ii) Where that nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable in effectiveness to that of the United States, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of measures.

(2) When determining whether to identify nations for these activities, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, duration, and gravity of the fishing activity of concern.

(b) *Notification of nations identified as having fishing vessels engaged in fishing*

activities or practices that target or incidentally catch sharks. Upon identifying in the biennial report to Congress a nation whose vessels engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the Moratorium Protection Act and this subpart N.

(c) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to that of the United States, taking into account different conditions, and establishment of a management plan that assists in the collection of species-specific data;

(2) Seek to enter into bilateral and multilateral treaties or other arrangements with such nations to protect sharks; and

(3) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the conservation of sharks to make such agreements consistent with this subpart.

(d) *International Cooperation and Assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist

those nations in qualifying for a positive certification under paragraph (e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and harvesting techniques aimed at mitigating or eliminating the non-target catch of sharks, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing, implementing, and enforcing appropriate fish harvesting plans for the conservation and sustainable management of sharks.

(e) *Procedures to certify nations identified as having fishing vessels engaged in fishing activities or practices that target or incidentally catch sharks.* Each nation that is identified as having fishing vessels engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions, shall receive either a positive or a negative certification from the Secretary of Commerce. This certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(1) Such nation has provided evidence documenting its adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to regulatory measures required under U.S. law in the relevant fisheries, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of measures; and such nation has established a management plan that will assist in the collection of species-specific data on sharks to support

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international stock assessments and conservation efforts for sharks.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations, and an opportunity to support and/or refute the preliminary determinations, and communicate actions taken to adopt a regulatory program that is comparable in effectiveness to that of the United States, taking into account different conditions. The Secretary of Commerce shall consider any relevant information received during consultations when making its formal certification determination.

[78 FR 3343, Jan. 16, 2013]

§ 300.205 Effect of certification.

(a) If a nation identified under § 300.202(a), § 300.203(a), or § 300.204(a) does not receive a positive certification under this subpart (*i.e.*, the nation receives a negative certification or no certification is made), the Secretary of Treasury shall, in accordance with recognized principles of international law:

(1) Withhold or revoke the clearance required by section 91 of the appendix to Title 46 for the fishing vessels of such nation; and

(2) Deny entry to the fishing vessels of such nation to any place in the United States and to the navigable waters of the United States.

(b) Upon notification and any recommendations by the Secretary of Commerce to the President that an identified nation has failed to receive a positive certification, the President is authorized to direct the Secretary of the Treasury to prohibit the importation of certain fish and fish products from such nation (see § 300.206).

(c) Any action recommended under paragraph (b) of this section shall be consistent with international obligations, including the WTO Agreement.

(d) If certain fish and fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing, bycatch, or shark catch described in the biennial report, or that nation has re-

taliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity, bycatch, or shark catch or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization.

(e) *Duration of certification.* Any nation identified in the biennial report to Congress for having vessels engaged in IUU fishing that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the biennial report. Any nation identified in the biennial report to Congress for having vessels engaged in PLMR bycatch or catch of sharks that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken the necessary actions pursuant to the Moratorium Protection Act to receive a positive certification.

(f) *Consultations.* NMFS will, working through or in consultation with the Department of State, continue consultations with nations that do not receive a positive certification with respect to the fishing activities described in the biennial report to Congress. The Secretary of Commerce shall take the results of such consultations into consideration when making a subsequent certification determination for each such nation.

[78 FR 3344, Jan. 16, 2013]

§ 300.206 Denial of port privileges and import restrictions on fish or fish products.

(a) *Scope of applicability.* (1) Vessels from a nation identified in the biennial

report under § 300.202(a), § 300.203(a), or § 300.204(a) and not positively certified by the Secretary of Commerce that enter any place in the United States or the navigable waters of the United States remain subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products, under applicable law. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of force majeure or distress.

(2) For nations identified in the previous biennial report under § 300.202(a) that are not positively certified in the current biennial report, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of Treasury to impose import prohibitions with respect to fish and fish products from those nations. Such a recommendation would address the relevant fishing activities or practices for which such nations were identified in the biennial report. Such import prohibitions, if implemented, would apply to fish and fish products managed under an applicable international fishery agreement. If there is no applicable international fishery agreement, such prohibitions, if implemented, would only apply to fish and fish products caught by vessels engaged in illegal, unreported, or unregulated fishing. For nations identified under § 300.203(a) or § 300.204(a) that are not positively certified, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of Treasury to impose import prohibitions with respect to fish and fish products from those nations; such prohibitions would only apply to fish and fish products caught by the vessels engaged in the relevant activity for which the nation was identified.

(3) Any action recommended under paragraph (a)(2) shall be consistent with international obligations, including the WTO Agreement.

(b) *Imposition of import restrictions*—(1) *Notification.* Where the Secretary of

Commerce cannot make positive certifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will file a notice with the Office of the Federal Register.

(2) *Certification of admissibility.* If certain fish or fish products are subject to import prohibitions, NMFS may publish in the FEDERAL REGISTER the requirement that, in addition to any other import documentation requirements that otherwise apply, other fish or fish products from the relevant nation, that are not subject to the prohibitions, offered for entry under this section must be accompanied by certification of admissibility, for which a form is available from NMFS. The certification of admissibility must be properly completed and signed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The certification must be signed by the importer of record and submitted to NMFS in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(3) *Effective date of import restrictions.* Effective upon the date of publication of such finding, shipments of fish or fish products found to be ineligible will be denied entry to the United States. Entry will not be denied for any such shipment that, on the date of publication, was in transit to the United States.

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary of Commerce that an identified nation that was not certified positively has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of § 300.206 shall no longer apply. The Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will notify such nations and will file with the Office of the Federal Register for publication notification of the removal of

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the import restrictions effective on the date of publication.

[76 FR 2024, Jan. 12, 2011. Redesignated and amended at 78 FR 3343, 3345, Jan. 16, 2013]

§ 300.207 Alternative procedures for nations identified as having vessels engaged in IUU fishing activities that are not certified in this subpart.

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation that has been identified under § 300.202 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that:

(1) The vessel has not engaged in IUU fishing under an international fishery management agreement to which the U.S. is a party; or

(2) The vessel is not identified by an international fishery management organization as participating in IUU fishing activities.

(c) In addition to any other import documentation requirements that otherwise apply, fish and fish products offered for entry under this section must be accompanied by certification of admissibility, for which a form is available from NMFS. The certification of admissibility must be properly completed and signed by a duly authorized official of the identified nation and must be validated by a responsible official(s) designated by NMFS. The certification must also be signed by the importer of record and submitted to NMFS in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(d) Any action recommended under this section shall be consistent with international obligations, including the WTO Agreement.

[76 FR 2024, Jan. 12, 2011. Redesignated and amended at 78 FR 3343, 3345, Jan. 16, 2013]

§ 300.208 Alternative procedures for nations identified as having vessels engaged in bycatch of PLMRs that are not certified in this subpart.

(a) These certification procedures may be applied to fish or fish products from a vessel of a harvesting nation that has been identified under § 300.203 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(1) Are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fisheries, the regulatory program of an identified nation includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(2) Include the gathering of species specific data that can be used to support international and regional assessments and conservation efforts for protected living marine resources.

(c) In addition to any other import documentation requirements that otherwise apply, fish and fish products offered for entry under this section must be accompanied by certification of admissibility, for which a form is available from NMFS. The certification of admissibility must be properly completed and signed by a duly authorized official of the identified nation and must be validated by a responsible official(s) designated by NMFS. The certification must also be signed by the importer of record and submitted to NMFS in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(d) Any action recommended under this section shall be consistent with

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international obligations, including the WTO Agreement.

[76 FR 2024, Jan. 12, 2011. Redesignated and amended at 78 FR 3343, 3345, Jan. 16, 2013]

§ 300.209 Alternative procedures for nations identified as having vessels engaged in shark catch that are not certified in this subpart.

(a) These certification procedures may be applied to fish and fish products from a vessel of a harvesting nation that has been identified under § 300.204 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish and fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish and fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that imports were harvested by fishing activities or practices that do not target or incidentally catch sharks, or were harvested by practices that—

(1) Are comparable to those of the United States, taking into account different conditions; and

(2) Include the gathering of species specific shark data that can be used to support international and regional assessments and conservation efforts for sharks.

(c) In addition to any other import documentation requirements that otherwise apply, fish and fish products offered for entry under this section must be accompanied by certification of admissibility, for which a form is available from NMFS. The certification of admissibility must be properly completed and signed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The certification must also be signed by the importer of record and submitted to NMFS in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(d) Any action recommended under this section shall be consistent with

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international obligations, including the WTO Agreement.

[78 FR 3346, Jan. 16, 2013]

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

SOURCE: 74 FR 38554, Aug. 4, 2009, unless otherwise noted.

AUTHORITY: 16 U.S.C. 6901 *et seq.*

§ 300.210 Purpose and scope.

This subpart implements provisions of the Western and Central Pacific Fisheries Convention Implementation Act (Act) and applies to persons and vessels subject to the jurisdiction of the United States.

§ 300.211 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and in the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (WCPF Convention), which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, the terms used in this subpart have the following meanings.

1982 Convention means the United Nations Convention on the Law of the Sea of 10 December 1982.

Active FAD is a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position.

Aggregate or summary form means information structured in such a way which does not directly or indirectly disclose the identity or business of any person who submits such information.

Areas under the national jurisdiction of the Parties to the Nauru Agreement means the exclusive economic zones of the Parties to the Nauru Agreement.

Commercial, with respect to commercial fishing, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

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Commission means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with the WCPF Convention, including its employees and contractors.

Confidential information means any observer information or any information submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the Act or under the Magnuson-Stevens Fishery Conservation and Management Act.

Conservation and management measure means those conservation and management measures adopted by the Commission pursuant to Article 10 of the WCPF Convention.

Convention Area means all waters of the Pacific Ocean bounded to the south and to the east by the following line: From the south coast of Australia due south along the 141st meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the 150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

Cooperating Non-Member means a non-Member of the Commission that has been accorded Cooperating Non-Member status by the Commission at the Commission's most recent annual meeting.

Eastern High Seas Special Management Area means the area of the high seas within the area bounded by the four lines connecting, in the most direct fashion, the coordinates specified as follows: 11° S. latitude and 161° W. longitude; 11° S. latitude and 154° W. longitude; 16° S. latitude and 154° W. lon-

gitude; and 16° S. latitude and 161° W. longitude.

Effort Limit Area for Purse Seine, or ELAPS, means, within the area between 20° N latitude and 20° S latitude, areas within the Convention Area that either are high seas or within the EEZ, except for the Overlap Area.

Fish aggregating device, or FAD, means any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.

Fishing means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so:

- (1) Searching for, catching, taking, or harvesting fish;
- (2) Engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose;
- (3) Placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (4) Engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in paragraphs (1) through (3) of this definition, including, but not limited to, bunkering;
- (5) Engaging in transshipment at sea, either unloading or loading fish.

Fishing day means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

Fishing trip means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

Fishing vessel means any vessel used or intended for use for the purpose of fishing, including bunkering and other support vessels, carrier vessels and other vessels that unload or load fish

in a transshipment, and any other vessel directly involved in fishing.

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

High seas fishing permit means a permit issued under § 300.13.

Highly migratory species (or HMS) means any of the following species:

Common name	Scientific name
Albacore	<i>Thunnus alalunga</i> .
Pacific bluefin tuna	<i>Thunnus orientalis</i> .
Southern bluefin tuna	<i>Thunnus maccoyii</i> .
Bigeye tuna	<i>Thunnus obesus</i> .
Skipjack tuna	<i>Katsuwonus pelamis</i> .
Yellowfin tuna	<i>Thunnus albacares</i> .
Little tuna	<i>Euthynnus affinis</i> .
Frigate mackerel	<i>Auxis thazard</i> ; <i>Auxis rochei</i> .
Pomfrets	Family Bramidae.
Marlins	<i>Tetrapturus angustirostris</i> ; <i>Tetrapturus audax</i> ; <i>Makaira mazara</i> ; <i>Makaira indica</i> ; <i>Makaira nigricans</i> .
Sail-fishes	<i>Istiophorus platypterus</i> .
Swordfish	<i>Xiphias gladius</i> .
Dolphinfish	<i>Coryphaena hippurus</i> ; <i>Coryphaena equiselis</i> .
Oceanic sharks	<i>Hexanchus griseus</i> ; <i>Cetorhinus maximus</i> ; Family Alopiidae; <i>Rhincodon typus</i> ; Family Carcharhinidae; Family Sphyrnidae; Family Isuridae (or Lamnidae).

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached, where “protected species zone” is used as defined at § 665.12 of this title.

Marine Fisheries Commission means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

Member of the Commission means any Contracting Party to the WCPF Convention, and, unless otherwise stated in context, any territory that has been authorized by an appropriate Contracting Party to participate in the Commission and its subsidiary bodies pursuant to Article 43 of the WCPF Convention and any fishing entity that has agreed to be bound by the regime established by the WCPF Convention pursuant to Annex I of the WCPF Convention.

Net sharing means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Observer employer/observer provider means any person that provides observers to fishing vessels, shoreside processors, or stationary floating processors under a requirement of the Act or the Magnuson-Stevens Fishery Conservation and Management Act.

Observer information means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

Overlap Area means the area within the Pacific Ocean bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude.

Pacific Islands Regional Administrator means the Regional Administrator, Pacific Islands Region, NMFS, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, or a designee.

Parties to the Nauru Agreement means the parties to the Nauru Agreement

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Concerning Cooperation in the Management of Fisheries of Common Interest, as specified on the Web site of the Parties to the Nauru Agreement at www.pnatuna.com.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

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

Special Agent-In-Charge (or SAC) means the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; tel: 808-725-6100; facsimile: 808-725-6199; email: pidvms@noaa.gov, or a designee.

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

Transshipment means the unloading of fish from on board one fishing vessel and its direct transfer to, and loading on board, another fishing vessel, either at sea or in port. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel. Net sharing is not a transshipment.

Vessel monitoring system (or VMS) means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

VMS unit, sometimes known as a "mobile transmitting unit," means a transceiver or communications device, including all hardware and software, that is carried and operated on a vessel as part of a VMS.

WCPFC Area Endorsement means the authorization issued by NMFS under

§ 300.212, supplementary to a valid high seas fishing permit and expressed as an endorsement to such permit, for a fishing vessel used for commercial fishing for highly migratory species on the high seas in the Convention Area.

WCPFC Convention means the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States) that was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

WCPFC inspection vessel means any vessel that is:

(1) Authorized by a member of the Commission to be used to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, Article 26 of the WCPFC Convention and procedures established by the Commission pursuant thereto;

(2) Included in the Commission's register of authorized inspection vessels and authorities or inspectors, established by the Commission in procedures pursuant to Article 26 of the WCPFC Convention; and

(3) Flying the WCPFC inspection flag established by the Commission.

WCPFC inspector means a person that is authorized by a member of the Commission to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, the boarding and inspection procedures adopted by the Commission under Article 26 of the WCPFC Convention, and referred to therein as a "duly authorized inspector" or "authorized inspector."

WCPFC Interim Register of Non-Member Carrier and Bunker Vessels means, for the purposes of this subpart, the WCPFC Interim Register of non-Member Carrier and Bunker Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at <http://www.wcpfc.int/>.

WCPFC observer means a person authorized by the Commission in accordance with any procedures established

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by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme.

WCPFC Record of Fishing Vessels means, for the purposes of this subpart, the WCPFC Record of Fishing Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at <http://www.wcpfc.int/>.

WCPFC transshipment monitor means, with respect to transshipments that take place on the high seas, a person authorized by the Commission to conduct transshipment monitoring on the high seas, and with respect to transshipments that take place in areas under the jurisdiction of a member of the Commission other than the United States, a person authorized by such member of the Commission to conduct transshipment monitoring.

[72 FR 18405, Apr. 12, 2007, as amended at 74 FR 64010, Dec. 7, 2009; 75 FR 3347, Jan. 21, 2010; 77 FR 71509, Dec. 3, 2012; 78 FR 30778, May 23, 2013; 79 FR 64110, Oct. 28, 2014; 80 FR 8815, Feb. 19, 2015; 80 FR 59047, Oct. 1, 2015; 83 FR 33869, July 18, 2018; 85 FR 37388, June 22, 2020]

§ 300.212 Vessel permit endorsements.

(a) Any fishing vessel of the United States used for commercial fishing for HMS on the high seas in the Convention Area must have on board a valid high seas fishing permit, or a copy thereof, that has a valid WCPFC Area Endorsement, or a copy thereof.

(b) *Eligibility.* Only a fishing vessel that has a valid high seas fishing permit is eligible to receive a WCPFC Area Endorsement.

(c) *Application.* (1) A WCPFC Area Endorsement may be applied for at the same time the underlying high seas permit is applied for, or at any time thereafter.

(2) The owner or operator of a high seas fishing vessel may apply for a WCPFC Area Endorsement by completing an application form, available

from the Pacific Islands Regional Administrator, and submitting the complete and accurate application, signed by the applicant, to the Pacific Islands Regional Administrator, along with the required fees.

(3) The application must be accompanied by a bow-to-stern side-view photograph of the vessel in its current form and appearance. The photograph must meet the specifications prescribed on the application form and clearly show that the vessel is marked in accordance with the vessel identification requirements of § 300.217.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of issuance of a WCPFC Area Endorsement. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from the Pacific Islands Regional Administrator, for determining administrative costs of each special product or service. The fee is specified in the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the WCPFC Area Endorsement. Payment by a commercial instrument later determined to be insufficiently funded is grounds for invalidating the WCPFC Area Endorsement.

(e) *Issuance.* (1) The Pacific Islands Regional Administrator will issue a WCPFC Area Endorsement within 30 days of receipt of a complete application that meets the requirements of this section and upon payment of the appropriate fee.

(2) If an incomplete or improperly completed application is submitted, the Pacific Islands Regional Administrator will notify the applicant of such deficiency within 30 days of the date of receipt of the application. If the applicant fails to correct the deficiency and send a complete and accurate application to the Pacific Islands Regional Administrator within 30 days of the date of the notification of deficiency, the application will be considered withdrawn and no further action will be taken to process the application. Following withdrawal, the applicant may at any time submit a new application for consideration.

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(f) *Validity.* A WCPFC Area Endorsement issued under this subpart expires upon the expiration of the underlying high seas fishing permit, and shall be void whenever the underlying high seas fishing permit is void, suspended, sanctioned or revoked. A WCPFC Area Endorsement is also subject to suspension or revocation independent of the high seas fishing permit. Renewal of a WCPFC Area Endorsement prior to its expiration is the responsibility of the WCPFC Area Endorsement holder.

(g) *Change in application information.* Any change in the required information provided in an approved or pending application for a WCPFC Area Endorsement must be reported by the vessel owner or operator to the Pacific Islands Regional Administrator in writing within 15 days of such change.

(h) *Transfer.* A WCPFC Area Endorsement issued under this subpart is valid only for the vessel, owner, and high seas fishing permit to which it is issued and is not transferable or assignable to another high seas fishing permit or to another vessel.

(i) *Display.* A valid WCPFC Area Endorsement, or a photocopy or facsimile copy thereof, issued under this subpart must be on board the vessel and available for inspection by any authorized officer while the vessel is at sea and must be available for inspection by any WCPFC inspector while the vessel is on the high seas in the Convention Area.

[75 FR 3349, Jan. 21, 2010]

§ 300.213 Vessel information.

(a) The owner or operator of any fishing vessel of the United States that is used for fishing for HMS in the Convention Area in waters under the jurisdiction of any nation other than the United States must, prior to the commencement of such fishing, submit to the Pacific Islands Regional Administrator information about the vessel and its ownership and operation, and the authorized fishing activities, including copies of any permits, licenses, or authorizations issued for such activities, as specified on forms available from the Pacific Islands Regional Administrator. The owner or operator of such a fishing vessel must also submit to the Pacific Islands Regional Administrator a bow-to-stern side-view pho-

tograph of the vessel in its current form and appearance, and the photograph must meet the specifications prescribed on the application form. If any of the submitted information changes, the vessel owner or operator must report the updated information to the Pacific Islands Regional Administrator in writing within 15 days of the change.

(b) If any of the information or the vessel photograph required under paragraph (a) of this section has been submitted for the subject vessel on an application for a high seas fishing permit or an application for a WCPFC Area Endorsement, then the requirements of paragraph (a) of this section will be deemed satisfied. However, in order to satisfy this requirement, the high seas fishing permit or WCPFC Area Endorsement must be valid, the information provided must be true, accurate and complete, and in the case of a vessel photograph, it must meet the specifications prescribed on the form used for the purpose of submitting the photograph under this section.

[75 FR 3349, Jan. 21, 2010]

§ 300.214 Compliance with laws of other nations.

(a) The owner and operator of a fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required:

(1) May not use the vessel for fishing, retaining fish on board, or landing fish in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) Shall, when the vessel is in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, operate the vessel in compliance with, and ensure its crew complies with, the applicable national laws of such member.

(b) The owner and operator of a fishing vessel of the United States shall ensure that:

(1) The vessel is not used for fishing for HMS, retaining HMS on board, or landing HMS in the Convention Area in

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areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) If the vessel is used for commercial fishing for HMS, including transshipment of HMS, in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, the vessel is operated in compliance with, and the vessel crew complies with, the applicable laws of such member, including any laws related to carrying vessel observers or the operation of VMS units.

(c) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

[75 FR 3349, Jan. 21, 2010]

§ 300.215 Observers.

(a) *Applicability.* This section applies to the following categories of fishing vessels:

(1) Any fishing vessel of the United States with a WCPFC Area Endorsement.

(2) Any fishing vessel of the United States for which a WCPFC Area Endorsement is required.

(3) Any fishing vessel of the United States used for commercial fishing that receives or offloads in the Convention Area a transshipment of HMS at sea.

(b) *Notifications.* (1) If a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area intends to conduct transshipments at sea, the owner or operator of that fishing vessel is required to carry a WCPFC observer under paragraph (d) of this section during the fishing trip and shall notify the Pacific Islands Regional Administrator of the need for a WCPFC observer at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip. The notice shall be provided to the Observer Placement Contact specified by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and lo-

cation, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, this notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(2) In order to obtain a WCPFC observer on a fishing trip departing from American Samoa, the owner or operator of a fishing vessel of the United States equipped with purse seine gear shall provide the Pacific Islands Regional Administrator with the following information before departure on the fishing trip, at least five days (exclusive of weekends and Federal holidays) before the owner or operator of the fishing vessel's intended departure: The name of the vessel; name of the operator of the vessel; a telephone number or email at which the owner or operator may be contacted; and the intended departure date. This information shall be provided to the address specified by the Pacific Islands Regional Administrator.

(c) *Accommodating observers.* (1) Fishing vessels specified in paragraphs (a)(1) and (2) of this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within any part of the Convention Area other than the Overlap Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (4), and (5) of this section with respect to any WCPFC observer.

(2) Fishing vessels specified in paragraph (a)(3) of this section must carry an observer when required to do so under paragraph (d) of this section, except for within the Overlap Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (4), and (5) of this section, as applicable, with respect to any WCPFC observer.

(3) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment as necessary to

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conduct observer duties, including, but not limited to: Full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(4) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) *Transshipment observer coverage—*

(1) *Receiving vessels.* Any fishing vessel of the United States used for commercial fishing that receives in the Convention Area a transshipment of HMS at sea must have a WCPFC observer on board during such transshipment unless at least one of the following sets of conditions applies:

(i) The vessel is less than or equal to 33 meters in registered length, the transshipment does not include any fish caught by purse seine gear, the transshipment does not include any frozen fish caught by longline gear, and, during the transshipment, there is a WCPFC observer on board the vessel that offloads the transshipment;

(ii) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught in such waters; or

(iii) The transshipment is an emergency, as specified under § 300.216(b)(4); or

(iv) The Pacific Islands Regional Administrator has by temporary specification published in the FEDERAL REGISTER modified or suspended the requirement to carry an observer for transshipments in accordance with § 300.228.

(2) *Offloading vessels.* Any fishing vessel of the United States used for commercial fishing that offloads a transshipment of HMS at sea in the Convention Area must have a WCPFC observer on board, unless one or more of the following conditions apply:

(i) The vessel that receives the transshipment has a WCPFC observer on board;

(ii) The vessel that receives the transshipment is greater than 33 meters in registered length;

(iii) The transshipment includes fish caught by purse seine gear;

(iv) The transshipment includes frozen fish caught by longline gear;

(v) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught in such waters; or

(vi) The transshipment is an emergency, as specified under § 300.216(b)(4); or

(vii) The Pacific Islands Regional Administrator has by temporary specification published in the FEDERAL REGISTER modified or suspended the requirement to carry an observer for transshipments in accordance with § 300.228.

(e) *Related observer requirements.* Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

(f) *Observer safety.* The following requirements apply when a WCPFC observer is on a fishing trip operating under the Commission's Regional Observer Programme.

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(1) The owner or operator of a fishing vessel of the United States shall immediately report the serious illness that threatens the health or safety of a WCPFC observer to the U.S. Government contact on the list provided by the Pacific Islands Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels>. In addition, the owner or operator of the fishing vessel must:

(i) Immediately cease fishing operations;

(ii) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(iii) Where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

(iv) Cooperate fully in any official investigations into the cause of the illness.

(2) In the event that a WCPFC observer on a fishing vessel of the United States has been assaulted, intimidated, threatened, or harassed, the owner or operator of the fishing vessel shall immediately notify the U.S. Government contact and observer program contact on the list provided by the Pacific Islands Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels> of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

(i) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(ii) If the observer or the observer provider indicate that they wish to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and

(iii) Cooperate fully in any official investigations into the incident.

[77 FR 71509, Dec. 3, 2012, as amended at 85 FR 37388, June 22, 2020; 86 FR 31180, June 11, 2021; 86 FR 35658, July 7, 2021]

§ 300.216 Transshipping, bunkering and net sharing.

(a) *Transshipment monitoring.* [Reserved]

(b) *Restrictions on transshipping and bunkering—*(1) *Restrictions on transshipments involving purse seine fishing vessels.* (i) Fish may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a fishing vessel equipped with purse seine gear at sea in the Convention Area.

(ii) Fish caught in the Convention Area may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea, and a fishing vessel of the United States may not be used to receive a transshipment of fish caught in the Convention Area from a fishing vessel equipped with purse seine gear at sea.

(iii) The restrictions in paragraphs (b)(1)(i) and (ii) of this section shall not apply to transshipments that are subject to a modification or suspension issued by the Pacific Islands Regional Administrator and published in the FEDERAL REGISTER under § 300.228.

(2) *Restrictions on at-sea transshipments.* This paragraph (b)(2) does not apply to transshipments meeting any of the following conditions: The transshipment is subject to a modification or suspension issued by the Pacific Islands Regional Administrator and published in the FEDERAL REGISTER under § 300.228; the transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters; or, the transshipment takes place entirely within the Overlap Area, and only includes fish caught within such waters.

(i) The owner and operator of a fishing vessel of the United States used for

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commercial fishing that offloads or receives a transshipment of HMS at sea in the Convention Area must ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment.

(ii) A fishing vessel of the United States used for commercial fishing that receives transshipments of HMS at sea in the Convention Area shall not receive such transshipments from more than one vessel at a time unless there is a separate WCPFC observer available on either the offloading or receiving vessel to monitor each additional transshipment.

(3) *General restrictions on transshipping and bunkering*—(i) *Transshipment*. Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in transshipment in the EEZ. Any fishing vessel of the United States used for commercial fishing shall not be used to offload or receive a transshipment of HMS in the Convention Area unless one or more of the following is satisfied:

(A) The other vessel involved in the transshipment is flagged to a Member or Cooperating Non-Member of the Commission;

(B) The other vessel involved in the transshipment is on the WCPFC Record of Fishing Vessels;

(C) The other vessel involved in the transshipment is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels; or

(D) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught within such waters.

(ii) *Bunkering, supplying and provisioning*. Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in bunkering in the EEZ. A fishing vessel of the United States used for commercial fishing for HMS shall not be used to provide bunkering, to receive bunkering, or to exchange supplies or provisions with another vessel in the Convention Area, except for the Overlap Area, unless one or more of the following is satisfied:

(A) The other vessel involved in the bunkering or exchange of supplies or provisions is flagged to a Member or a Cooperating Non-Member of the Commission;

(B) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Record of Fishing Vessels; or

(C) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels.

(4) *Emergency transshipments*. The restrictions in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section shall not apply to a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage.

(c) *Net sharing restrictions*. (1) The owner and operator of a fishing vessel of the United States shall not conduct net sharing in the Convention Area, except for within the Overlap Area, unless all of the following conditions are met:

(i) The vessel transferring the fish is a fishing vessel of the United States equipped with purse seine gear;

(ii) The vessel transferring the fish has insufficient well space for the fish;

(iii) The vessel transferring the fish engages in no additional purse seine sets during the remainder of the fishing trip; and

(iv) The vessel accepting the fish is a fishing vessel of the United States equipped with purse seine gear.

(2) Only fishing vessels of the United States that are authorized to be used for fishing in the EEZ may engage in net sharing in the EEZ, subject to the provisions of paragraph (c)(1) of this section.

[77 FR 71510, Dec. 3, 2012, as amended at 85 FR 37389, June 22, 2020; 86 FR 31180, June 11, 2021]

§ 300.217 Vessel identification.

(a) *General*. (1) A fishing vessel must be marked in accordance with the requirements of this section in order for a WCPFC Area Endorsement to be issued for the fishing vessel.

(2) Any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required shall be marked for identification purposes in accordance with this section, and all parts of such markings shall be clear, distinct, uncovered, and unobstructed.

(3) Any boat, skiff, or other watercraft carried on board the fishing vessel shall be marked with the same identification markings as required under this section for the fishing vessel and shall be marked in accordance with this section.

(b) *Marking.* (1) Vessels shall be marked in accordance with the identification requirements of § 300.336(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters “USA” and a hyphen (that is, “USA-”).

(2) With the exception of the vessel’s name and hailing port, the marking required in this section shall be the only vessel identification mark consisting of letters and numbers to be displayed on the hull and superstructure.

(c) *IMO numbers.* (1) For the purpose of this section, an IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme’s numbering format, sometimes known as a Lloyd’s Register number or LR number.

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel’s current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or 100 GT ITC, or less than 100 GRT down to a size of 12 meters in overall length. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification

number scheme; those instructions are currently available on the website of IHS Markit at: www.imonumbers.lrfairplay.com.

(3) In the event that the owner of a fishing vessel subject to the requirement of paragraph (c)(2) of this section, after following the instructions given by the administrator of the IMO ship identification number scheme, is unable to obtain an IMO number for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Pacific Islands Regional Administrator. The request must be sent by mail to the Pacific Islands Regional Administrator or by email to pir.wcpfc@noaa.gov and must include the vessel’s name, the vessel’s official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(4) Upon receipt of a request for an exemption under paragraph (c)(3) of this section, the Pacific Islands Regional Administrator will, to the extent he or she determines appropriate, assist the fishing vessel owner in requesting an IMO number. If the Pacific Islands Regional Administrator determines that it is infeasible or impractical for the fishing vessel owner to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements of paragraph (c)(2) of this section for the subject fishing vessel and its owner and notify the fishing vessel owner of the exemption. The Pacific Islands Regional Administrator may limit the duration of the exemption. The Pacific Islands Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (c)(2) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

[75 FR 3350, Jan. 21, 2010, as amended at 76 FR 73520, Nov. 29, 2011; 80 FR 59047, Oct. 1, 2015; 83 FR 33869, July 18, 2018; 88 FR 30678, May 12, 2023]

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§ 300.218 Reporting and recordkeeping requirements.

(a) *Fishing reports*—(1) *General*. The owner or operator of any fishing vessel of the United States used for commercial fishing for HMS in the Pacific Ocean must maintain and report to NMFS catch and effort and other operational information for all such fishing activities. The reports must include at a minimum: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded.

(2) *Reporting options*. Vessel owners and operators shall be deemed to meet the recordkeeping and reporting requirements of paragraph (a)(1) of this section by satisfying all applicable catch and effort reporting requirements as listed below:

(i) *Western Pacific pelagic fisheries*. Fishing activities subject to the reporting requirements of § 665.14 of this title must be maintained and reported in the manner specified in that section.

(ii) *West Coast HMS fisheries*. Fishing activities subject to the reporting requirements of § 660.708(a) of this title must be maintained and reported in the manner specified in that section.

(iii) *Pacific tuna fisheries*. Fishing activities subject to the reporting requirements of § 300.22 must be maintained and reported in the manner specified in that section.

(iv) *South Pacific tuna fisheries*. Fishing activities subject to the reporting requirements of § 300.34(c)(1) must be maintained and reported in the manner specified in that section.

(v) *High seas fisheries*. Fishing activities subject to the reporting requirements of § 300.341 must be maintained and reported in the manner specified in § 300.341(a).

(vi) *Canada albacore fisheries*. Fishing activities subject to the reporting requirements of § 300.174 must be maintained and reported in the manner specified in that section.

(vii) *State-regulated fisheries*. Catch and effort information for fishing activities for which reporting of effort, catch, and/or landings is required under State law must be maintained and reported in the manner specified under such State law.

(viii) *Other fisheries*. All other fishing activities subject to the requirement of paragraph (a)(1) of this section must be recorded on paper or electronic forms specified or provided by the Pacific Islands Regional Administrator. Such forms will specify the information required, which may include: Identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded. All information specified by the Pacific Islands Regional Administrator on such forms must be recorded on paper or electronically within 24 hours of the completion of each fishing day. The information recorded must, for each fishing day, include a dated signature of the vessel operator or other type of authentication as specified by the Pacific Islands Regional Administrator. The vessel operator must, unless otherwise specified by the Pacific Islands Regional Administrator, submit the information for each fishing day to the Pacific Islands Regional Administrator within 72 hours of the first landing or port call after the fishing day, and must submit the information in the manner specified by the Pacific Islands Regional Administrator.

(3) *Exceptions*. (i) Catch and effort information for fishing activities that take place in waters under State jurisdiction must be maintained and reported only in cases where the reporting of such activity is required under State law or under Federal regulations at §§ 300.22 and 300.34, and §§ 660.708 and 665.14 of this title.

(ii) Catch and effort information for fishing activities that take place in waters under Federal jurisdiction around American Samoa, Guam and the Northern Mariana Islands need not be reported under this section unless reporting of such activity is required under regulations in chapter VI of this title.

(b) *Transshipment reports*. The owner and operator of any fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment anywhere of HMS caught in the Convention Area, must ensure that a transshipment report for the transshipment

is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The owner and operator of the vessel must ensure that the transshipment report is completed and signed within 24 hours of the completion of the transshipment, and must ensure that the report is submitted as follows:

(1) For vessels licensed under § 300.32, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 300.34(c)(2) for submitting the transshipment logsheet form to the Administrator as defined at § 300.31.

(2) For vessels registered for use under § 660.707 of this title, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified for the logbook form at § 660.708 of this title.

(3) For vessels subject to the requirements of § 665.14(c) and § 665.801(e) of this title, and not subject to the requirements of paragraphs (b)(1) or (b)(2) of this section, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 665.14(c) of this title for submitting transshipment logbooks to the Pacific Islands Regional Administrator for landings of western Pacific pelagic management unit species.

(4) For all transshipments on the high seas and emergency transshipments that meet the conditions described in § 300.216(b)(4), including transshipments involving the categories of vessels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the report is submitted by fax or email to the address specified by the Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report may be submitted with or without signatures so long as the original transshipment report with signatures is submitted to the address specified by the Pacific Islands Regional Administrator no later than 15 calendar days after the vessel first enters into port or 15 calendar days after completion of

the transshipment for emergency transshipments in port.

(5) For all other transshipments at sea, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after the vessel first enters into port.

(6) For all other transshipments in port, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after completion of the transshipment.

(c) *Exceptions to transshipment reporting requirements.* Paragraph (b) of this section shall not apply to a transshipment that takes place entirely within the Overlap Area or within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(d) *Transshipment notices*—(1) *High seas transshipments.* This section shall not apply to a transshipment that takes place entirely within the Overlap Area and only includes fish caught within such waters. The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS on the high seas in the Convention Area or a transshipment of HMS caught in the Convention Area anywhere on the high seas and not subject to the requirements of paragraph (d)(2) of this section, must ensure that a notice is submitted to the Commission by fax or email at least 36 hours prior to the start of such transshipment at the address specified by the Pacific Islands Regional Administrator, and that a copy of that notice is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator at least 36 hours prior to the start of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

- (i) The name of the offloading vessel.
- (ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

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(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected amount, in metric tons, of fish product to be transshipped, broken down by species and processed state.

(vi) The expected date or dates of the transshipment.

(vii) The expected location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(2) *Emergency transshipments.* This section shall not apply to a transshipment that takes place entirely within the Overlap Area and only includes fish caught within such waters. The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS that offloads or receives a transshipment of HMS in the Convention Area or a transshipment of HMS caught in the Convention Area anywhere that is allowed under § 300.216(b)(4) but would otherwise be prohibited under the regulations in this subpart, must ensure that a notice is submitted by fax or email to the Commission at the address specified by the Pacific Islands Regional Administrator, and a copy is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator within 12 hours of the completion of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and

must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected or actual amount, in metric tons, of fish product transshipped, broken down by species and processed state.

(vi) The expected or actual date or dates of the transshipment.

(vii) The expected or actual location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected or actual transshipment location is situated: High seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(x) The reason or reasons for the emergency transshipment (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage).

(3) *Location of high seas and emergency transshipments.* A high seas or emergency transshipment in the Convention Area or of HMS caught in the Convention Area anywhere subject to the notification requirements of paragraph (d)(1) or (d)(2) must take place within 24 nautical miles of the location for the transshipment indicated in the notice submitted under paragraph (d)(1)(vii) or (d)(2)(vii) of this section.

(e) *Purse seine discard reports.* The owner and operator of any fishing vessel of the United States equipped with purse seine gear must ensure that a report of any at-sea discards of any big-eye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*) caught in the Convention Area, except for within the Overlap Area, is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The report must be submitted within 48 hours after any discard to the Commission by fax or email at the address specified by the Pacific Islands Regional Administrator. A copy of the report must be submitted to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email within 48 hours after any such discard. A hard copy of the report must be provided to the observer on board the vessel, if any.

(f) *Net sharing reports.* This paragraph (f) does not apply to net sharing activity within the Overlap Area.

(1) *Transferring vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that transfers fish to another fishing vessel equipped with purse seine gear under § 300.216(c) shall ensure that the amount, by species, of fish transferred, as well as the net sharing activity, is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

(2) *Accepting vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that accepts fish from another purse seine fishing vessel under § 300.216(c) shall ensure that the net sharing activity is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

(g) *Daily purse seine fishing effort reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner directed by the Pacific Islands Re-

gional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, except for within the Overlap Area, the activity of the vessel (*e.g.*, setting, transiting, searching), location and type of set, if a set was made during that day.

(h) *Whale shark encirclement reports.* The owner and operator of a fishing vessel of the United States used for commercial fishing in the Convention Area that encircles a whale shark (*Rhincodon typus*) with a purse seine in the Convention Area shall ensure that the incident is recorded by the end of the day on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator. This paragraph (h) does not apply in the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or in the Overlap Area.

[75 FR 3350, Jan. 21, 2010, as amended at 77 FR 71511, Dec. 3, 2012; 79 FR 77943, Dec. 29, 2014; 80 FR 8815, Feb. 19, 2015; 80 FR 59048, Oct. 1, 2015; 83 FR 33869, July 18, 2018; 85 FR 37389, June 22, 2020]

§ 300.219 Vessel monitoring system.

(a) *SAC and VMS Helpdesk contact information and business hours.* For the purpose of this section, the following contact information applies:

(1) *SAC.* Address: 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808-725-6100; facsimile: 808-725-6199; email: pidvms@noaa.gov; business hours: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time.

(2) *VMS Helpdesk.* Telephone: 888-219-9228; email: ole.helpdesk@noaa.gov; business hours: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(b) *Applicability.* This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(c) *Provision of vessel position information—(1) VMS unit.* The vessel owner and operator shall install and maintain on the fishing vessel, in accordance with instructions provided by the SAC

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and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers. NMFS and the Commission are authorized to receive and relay transmissions from the VMS unit.

(2) *VMS unit activation.* If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous activation, or if directed by the SAC, the vessel owner and operator shall, prior to the vessel leaving port:

(i) Turn on the VMS unit to make it operational;

(ii) Submit a written activation report, via mail, facsimile or e-mail, to the SAC, that includes: the vessel's name; the vessel's official number; the VMS unit manufacturer and identification number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(3) *VMS unit operation.* The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is at port or otherwise not at sea, provided that the owner and operator:

(i) Prior to shutting down the VMS unit, report to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk via facsimile or e-mail, the following information: the intent to shut down the VMS unit; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(ii) When turning the VMS unit back on, report to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk, via mail, facsimile or e-mail,

the following information: that the VMS unit has been turned on; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Prior to leaving port, receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(4) *Failure of VMS unit.* If the vessel owner or operator becomes aware that the VMS unit has become inoperable or that transmission of automatic position reports from the VMS unit has been interrupted, or if notified by NMFS or the USCG that automatic position reports are not being received from the VMS unit or that an inspection of the VMS unit has revealed a problem with the performance of the VMS unit, the vessel owner and operator shall comply with the following requirements:

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or e-mail at the earliest opportunity during the SAC's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC, which could include, but are not limited to: ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and, repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is

owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

(d) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit, and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS as required in paragraph (c) of this section. However, if the VMS unit is being carried and operated in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units, the vessel owner and operator shall not be responsible for costs that are the responsibility of NMFS under those regulations.

(e) *Tampering.* The vessel owner and operator shall ensure that the VMS unit is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(f) *Inspection.* The vessel owner and operator shall make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers, by employees of the Commission, by persons appointed by the Executive Director of the Commission for this purpose, and, when the vessel is on the high seas in the Convention Area, by WCPFC inspectors.

(g) *Access to data.* The vessel owner and operator shall make the vessel's position data obtained from the VMS unit or other means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers, and shall make the vessel's position data for positions on the high seas in the Convention Area immediately and always available to WCPFC inspectors and the Commission.

(h) *Communication devices.* (1) To facilitate communication with management and enforcement authorities regarding the functioning of the VMS

unit and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device that is capable of real-time communication with the SAC. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. If the device is anything other than a radio, the contact number for the device must be provided to the Pacific Islands Regional Administrator on the application form for the WCPFC Area Endorsement in accordance with the requirements of § 300.212.

(2) For the purpose of submitting the position reports that might be required in cases of VMS unit failure under paragraph (c)(4)(ii) of this section, the vessel operator shall, while the vessel is at sea, carry on board a communication device capable of transmitting, while the vessel is on the high seas in the Convention Area, communications by telephone, facsimile, e-mail, or radio to the Commission, in Pohnpei, Micronesia. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. The same communication device may be able to satisfy the requirements of both this paragraph and paragraph (h)(1) of this section.

[75 FR 3351, Jan. 21, 2010, as amended at 79 FR 64110, Oct. 28, 2014; 80 FR 59048, Oct. 1, 2015]

§ 300.220 Confidentiality of information.

(a) *Types of information covered.* NOAA is authorized under the Act and other statutes to collect and maintain information. This section applies to confidential information collected under authority of the Act.

(b) *Collection and maintenance of information—(1) General.* (i) Any information required to be submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission under the Act shall be provided to the Assistant Administrator.

(ii) Any observer information collected under the Act shall be provided to the Assistant Administrator.

(iii) Appropriate safeguards as specified by NOAA Administrative Order

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(NAO) 216-100 or other NOAA/NMFS internal procedures, apply to the collection and maintenance of any information collected pursuant to paragraphs (b)(1) or (b)(2) of this section, whether separated from identifying particulars or not, so as to ensure their confidentiality. Information submitted to the Secretary in compliance with this subpart shall not be disclosed except as authorized herein or by other law or regulation.

(2) *Collection agreements with States or Marine Fisheries Commissions.* (i) The Assistant Administrator may enter into an agreement with a State or a Marine Fisheries Commission authorizing the State or Marine Fisheries Commission to collect information on behalf of the Secretary.

(ii) To enter into a cooperative collection agreement with a State or a Marine Fisheries Commission, NMFS must ensure that:

(A) The State has authority to protect the information from disclosure in a manner at least as protective as these regulations.

(B) The Marine Fisheries Commission has enacted policies and procedures to protect the information from public disclosure.

(3) *Collection services by observer employer/observer provider.* The Assistant Administrator shall make the following determinations before issuing a permit or letting a contract or grant to an organization that provides observer services:

(i) That the observer employer/observer provider has enacted policies and procedures to protect the information from public disclosure;

(ii) That the observer employer/observer provider has entered into an agreement with the Assistant Administrator that prohibits public disclosure and specifies penalties for such disclosure; and

(iii) That the observer employer/observer provider requires each observer to sign an agreement with NOAA/NMFS that prohibits public disclosure of observer information and specifies penalties for such disclosure.

(c) *Access to information—(1) General.* This section establishes procedures intended to manage, preserve, and protect the confidentiality of information

submitted in compliance with the Act and its implementing regulations. This section applies to those persons and organizations deemed eligible to access confidential information subject to the terms and conditions described in this section and the Act. All other persons requesting access to confidential information should follow the procedures set forth in the Freedom of Information Act, 5 U.S.C. 552, 15 CFR parts 15 and 903, NAO 205-14, and Department of Commerce Administrative Orders 205-12 and 205-14, as applicable. Persons eligible to access confidential information under this section shall submit to NMFS a written request with the following information:

(i) The specific types of information requested;

(ii) The relevance of the information to requirements of the Act;

(iii) The duration of time that access will be required: continuous, infrequent, or one-time; and

(iv) An explanation of why the availability of information in aggregate or summary form from other sources would not satisfy the requested needs.

(2) *Federal employees.* Confidential information will only be accessible to the following:

(i) Federal employees who are responsible for administering, implementing, or enforcing the Act. Such persons are exempt from the provisions of paragraph (c)(1) of this section.

(ii) NMFS employees responsible for the collection, processing, and storage of the information or performing research that requires access to confidential information. Such persons are exempt from the provisions of paragraph (c)(1) of this section.

(iii) Other NOAA employees on a demonstrable need-to-know basis.

(iv) Persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS.

(3) *Commission.* (i) Confidential information will be subject to disclosure to the Commission, but only if:

(A) The information is required to be submitted to the Commission under the requirements of the WCPF Convention or the decisions of the Commission;

(B) The provision of such information is in accord with the requirements of the Act, the WCPF Convention, and the decisions of the Commission, including any procedures, policies, or practices adopted by the Commission relating to the receipt, maintenance, protection or dissemination of information by the Commission; and

(C) The provision of such information is in accord with any agreement between the United States and the Commission that includes provisions to prevent public disclosure of the identity or business of any person.

(ii) The provisions of paragraph (c)(1) of this section do not apply to the release of confidential information to the Commission.

(4) *State employees.* Confidential information may be made accessible to a State employee only by written request and only upon the determination by NMFS that at least one of the following conditions is met:

(i) The employee has a need for confidential information to further the Department of Commerce's mission, and the State has entered into a written agreement between the Assistant Administrator and the head of the State's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the State has confidentiality protection authority comparable to the Act and that the State will exercise this authority to prohibit public disclosure of the identity or business of any person.

(ii) The employee enforces the Act or fishery management plans prepared under the authority of the Magnuson-Stevens Conservation and Management Act, and the State for which the employee works has entered into a fishery enforcement agreement with the Secretary and the agreement is in effect.

(5) *Marine Fisheries Commission employees.* Confidential information may be made accessible to Marine Fisheries Commission employees only upon written request of the Marine Fisheries Commission and only if the request demonstrates a need for confidential information to further the Department of Commerce's mission, and the executive director of the Marine Fisheries Commission has entered into a written

agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the Marine Fisheries Commission has confidentiality protection policies and procedures to protect from public disclosure information that would reveal the identity or business of any person.

(6) *Homeland and national security activities.* Confidential information may be made accessible to Federal employees for purposes of promoting homeland security or national security at the request of another Federal agency only if:

(i) Providing the information promotes homeland security or national security purposes including the USCG's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); and

(ii) The requesting agency has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the requesting agency has confidentiality policies and procedures to protect the information from public disclosure.

(7) *Observer and observer employer/observer provider.* Confidential information used for purposes other than those contained in this subpart or in part 600 of this title may only be used by observers and observer employers/observer providers in order:

(i) To adjudicate observer certifications;

(ii) To allow the sharing of observer information among the observers and between observers and observer employers/observer providers as necessary to train and prepare observers for deployments on specific vessels; or

(iii) To validate the accuracy of the observer information collected.

(8) Persons having access to confidential information may be subject to criminal and civil penalties for unauthorized use or disclosure of confidential information. See 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216–100.

(d) *Control system.* (1) The Assistant Administrator maintains a control system to protect the identity or business of any person who submits information

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in compliance with any requirement or regulation under the Act. The control system:

- (i) Identifies those persons who have access to the information;
- (ii) Contains procedures to limit access to confidential information to authorized users; and
- (iii) Provides handling and physical storage protocols for safeguarding of the information.

(2) This system requires that all persons who have authorized access to the information be informed of the confidentiality of the information. These persons, with the exception of employees and contractors of the Commission, are required to sign a statement that they:

- (i) Have been informed that the information is confidential; and
- (ii) Have reviewed and are familiar with the procedures to protect confidential information.

(e) *Release of information.* (1) The Assistant Administrator will not disclose to the public any confidential information, except:

(i) When the Secretary has obtained from the person who submitted the information an authorization to release the information to persons for reasons not otherwise provided for in this subpart. In situations where a person provides information through a second party, both parties are considered joint submitters of information and either party may request a release. The authorization to release such information will require:

(A) A written statement from the person(s) who submitted the information authorizing the release of the submitted information; and

(B) A finding by the Secretary that such release does not violate other requirements of the Act or other applicable laws.

(ii) Observer information as authorized by a fishery management plan (prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act) or regulations under the authority of the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific

bycatch information without vessel identification.

(iii) When such information is required to be submitted for any determination under a limited access program.

(iv) When required by a court order.

(2) All requests from the public for confidential information will be processed in accordance with the requirements of 5 U.S.C. 552a, 15 CFR parts 4 and 903, NAO 205-14, and Department of Commerce Administrative Orders DAO 205-12 and DAO 205-14. Nothing in this section is intended to confer any right, claim, or entitlement to obtain access to confidential information not already established by law.

(3) NMFS does not release or allow access to confidential information in its possession to members of advisory groups of the Regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act, except as provided by law.

[75 FR 3352, Jan. 21, 2010]

§ 300.221 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) A fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required, including the vessel's operator and each member of the vessel's crew shall, when in the Convention Area, be subject to the following requirements:

(1) The Federal Certificate of Documentation or State or other documentation for the vessel, or a copy thereof, shall be carried on board the vessel. Any license, permit or other authorization to use the vessel to fish, retain fish, transship fish, or land fish issued by a nation or political entity other than the United States, or a copy thereof, shall be carried on board the vessel. These documents shall be made available for inspection by any authorized officer. If the vessel is on the high seas, the above-mentioned licenses, permits, and authorizations shall also be made available for inspection by any WCPFC inspector. If the vessel is

in an area under the jurisdiction of a member of the Commission other than the United States, they shall be made available for inspection by any authorized enforcement official of that member.

(2) For the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission, the operator shall ensure the continuous monitoring of the international safety and calling radio frequency 156.8 MHz (Channel 16, VHF-FM) and, if the vessel is equipped to do so, the international distress and calling radio frequency 2.182 MHz (HF).

(3) The operator shall ensure that an up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

(4) When engaged in transshipment on the high seas or in an area under the jurisdiction of a member of the Commission other than the United States, the operator and crew shall:

(i) Provide any WCPFC transshipment monitor with full access to, and use of, facilities and equipment which such authorized person may determine is necessary to carry out his or her duties to monitor transshipment activities, including full access to the bridge, fish on board, and all areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying;

(ii) Allow and assist any WCPFC transshipment monitor to collect and remove samples and gather any other information required to fully monitor transshipment activities.

(iii) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC transshipment monitor in the performance of such person's duties, or attempt to do any of the same.

(b) The operator and crew of a fishing vessel of the United States, when on the high seas in the Convention Area, shall be subject to the following requirements:

(1) The operator and crew shall immediately comply with instructions given by an officer on board a WCPFC

inspection vessel to move the vessel to a safe location and/or to stop the vessel, provided that the officer has, prior to the issuance of such instructions:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator his or her intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(2) The operator and crew shall accept and facilitate prompt and safe boarding by any WCPFC inspector, provided that an officer on board the WCPFC inspection vessel has, prior to such boarding:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator an intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(3) Provided that the WCPFC inspector has presented to the vessel operator his or her identity card identifying him or her as an inspector authorized to carry out boarding and inspection procedures under the auspices of the Commission, and a copy of the text of the relevant conservation and management measures in force pursuant to the WCPFC Convention in the relevant area of the high seas, the operator and crew shall:

(i) Cooperate with and assist any WCPFC inspector in the inspection of the vessel, including its authorizations to fish, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and management measures in force pursuant to the WCPFC Convention;

(ii) Allow any WCPFC inspector to communicate with the crew of the WCPFC inspection vessel, the authorities of the WCPFC inspection vessel and the authorities of the vessel being inspected;

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(iii) Provide any WCPFC inspector with reasonable facilities, including, where appropriate, food and accommodation; and

(iv) Facilitate safe disembarkation by any WCPFC inspector.

(4) If the operator or crew refuses to allow a WCPFC inspector to board and inspect the vessel in the manner described in this paragraph, they shall offer to the WCPFC inspector an explanation of the reason for such refusal.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC inspector in the performance of such person's duties, or attempt to do any of the same.

(c) When a fishing vessel of the United States that is used for commercial fishing for HMS is in the Convention Area and is either on the high seas without a valid WCPFC Area Endorsement or is in an area under the jurisdiction of a nation other than the United States without an authorization by that nation to fish in that area, all the fishing gear and fishing equipment on the fishing vessel shall be stowed in a manner so as not to be readily available for fishing, specifically:

(1) If the fishing vessel is used for purse seining and equipped with purse seine gear, the boom must be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and the launches must be secured.

(2) If the fishing vessel is used for longlining and equipped with longline gear, the branch or dropper lines and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(3) If the fishing vessel is used for trolling and equipped with troll gear, no lines or hooks may be placed in the water; if outriggers are present on the vessel, they must be secured in a vertical position; if any power-operated haulers are located on deck they must

be covered in such a manner that they are not readily available for use.

(4) If the fishing vessel is used for pole-and-line fishing and equipped with pole-and-line gear, any poles rigged with lines and hooks must be stowed in such a manner that they are not readily available for use.

(5) For any other type of fishing vessel, all the fishing gear and equipment on the vessel must be stowed in a manner so as not to be readily available for use.

(d) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

[75 FR 3354, Jan. 21, 2010]

§ 300.222 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Fail to obtain and have on board a fishing vessel a valid WCPFC Area Endorsement as required in § 300.212.

(b) Fail to report a change in the information required in an application for a WCPFC Area Endorsement as required in § 300.212(g).

(c) Fail to provide information on vessels and fishing authorizations or fail to report changes in such information as required in § 300.213.

(d) Fish for, retain on board, or land fish, including HMS, in areas under the jurisdiction of a nation other than the United States without authorization by such nation to do so, as provided in § 300.214(a)(1) and (b)(1).

(e) Operate a fishing vessel in violation of, or fail to ensure the vessel crew complies with, the applicable national laws of a member of the Commission other than the United States, including any laws related to carrying vessel observers or the operation of VMS units, as provided in § 300.214(a)(2) and (b)(2).

(f) Fail to carry, allow on board, or assist a WCPFC observer as required in § 300.215.

(g) Assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, or interfere with a WCPFC observer, or attempt to do any of the same, or fail to provide a WCPFC observer with food, accommodation or medical facilities, as required in § 300.215.

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(h) Offload, receive, or load fish from a purse seine vessel at sea in the Convention Area, in contravention of § 300.216.

(i) Fail to mark a fishing vessel or a boat, skiff, or other watercraft on board the fishing vessel as required in § 300.217, or remove, obscure, or obstruct such markings, or attempt to do so.

(j) Fail to maintain and report catch and effort information or transshipment information as required in § 300.218.

(k) Fail to install, activate, or operate a VMS unit as required in § 300.219(c).

(l) In the event of VMS unit failure or interruption, fail to repair or replace a VMS unit, fail to notify the SAC and follow the instructions provided, or otherwise fail to act as provided in § 300.219(c)(4).

(m) Disable, destroy, damage or operate improperly a VMS unit installed under § 300.219, or attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.219(e).

(n) Fail to make a VMS unit installed under § 300.219 or the position data obtained from it available for inspection, as provided in § 300.219(f) and (g).

(o) Fail to carry on board and monitor communication devices as required in § 300.219(h).

(p) Fail to carry on board and make available the required vessel documentation and authorizations as required in § 300.221(a)(1).

(q) Fail to continuously monitor the specified radio frequencies as required in § 300.221(a)(2).

(r) Fail to carry on board, and keep accessible, an up-to-date copy of the International Code of Signals as required in § 300.221(a)(3).

(s) Fail to provide access to, or fail to allow and assist, a WCPFC transshipment monitor as required in § 300.221(a)(4).

(t) Fail to comply with the instructions of, or fail to accept and facilitate prompt and safe boarding by, a WCPFC inspector, or fail to cooperate and assist a WCPFC inspector in the inspection of a fishing vessel, as provided in § 300.221(b).

(u) Fail to stow fishing gear or fishing equipment as required in § 300.221(c).

(v) Use a fishing vessel equipped with purse seine gear to fish in an area closed to purse seine fishing under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or a vessel, deploy, activate, or service a FAD, or use lights in contravention of § 300.223(b).

(x) Discard fish at sea in the Convention Area in contravention of § 300.223(d).

(y) Fail to comply with the sea turtle mitigation gear and handling requirements of § 300.223(f).

(z) Use a fishing vessel to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.224(f)(1) or (f)(2).

(aa) Use a fishing vessel to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.224(f)(3).

(bb) Fail to stow longline gear as required in § 300.224(f)(4).

(cc) Fail to carry on board a WCPFC observer during a transshipment at sea, as required in § 300.215(d).

(dd) Offload, receive, or load fish caught in the Convention Area from a purse seine vessel at sea in contravention of § 300.216.

(ee) Fail to ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment in contravention of § 300.216(b)(2)(i), except as specified at § 300.216(b)(4).

(ff) Receive transshipments from more than one fishing vessel at a time in contravention of § 300.216(b)(2)(ii), except as specified at § 300.216(b)(4).

(gg) Transship to or from another vessel, in contravention of § 300.216(b)(3)(i), except as specified at § 300.216(b)(4).

(hh) Provide bunkering, receive bunkering, or exchange supplies or provisions with another vessel, in contravention of § 300.216(b)(3)(ii).

(ii) Engage in net sharing except as specified under § 300.216(c).

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(jj) Fail to submit, or ensure submission of, a transshipment report as required in §300.218(b), except as specified under §300.218(c).

(kk) Fail to submit, or ensure submission of, a transshipment notice as required in §300.218(d).

(ll) Transship more than 24 nautical miles from the location indicated in the transshipment notice, in contravention of §300.218(d)(3).

(mm) Fail to submit, or ensure submission of, a discard report as required in §300.218(e).

(nn) Fail to submit, or ensure submission of, a net sharing report as required in §300.218(f).

(oo) Transship in the Eastern High Seas Special Management Area in contravention of §300.225.

(pp) Fail to submit, or ensure submission of, a daily purse seine fishing effort report as required in §300.218(g).

(qq) Fail to submit, or ensure submission of, a whale shark encirclement report as required in §300.218(h).

(rr) Set or attempt to set a purse seine on or around a whale shark (*Rhincodon typus*) in contravention of §300.223(g).

(ss) Fail to release a whale shark encircled in a purse seine net of a fishing vessel as required in §300.223(h).

(tt) Use a fishing vessel to retain on board, transship, store, or land any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or silky shark (*Carcharhinus falciformis*) in contravention of §300.226(a).

(uu) Fail to release an oceanic whitetip shark or silky shark as required in §300.226(b).

(vv) Fail to obtain an IMO number for a fishing vessel as required in §300.217(c).

(ww) Fail to carry an observer as required in §300.223(e).

(xx) Fail to comply with any of the limits, restrictions, prohibitions, or requirements specified under §300.227.

(yy) Fail to comply with the requirements of any temporary specification issued under §300.228.

(zz) Fail to comply with the observer safety requirements in §300.215(f).

(aaa) Fail to provide pre-trip notification per requirements in §300.215(b).

(bbb) Fail to comply with the FAD design requirements in §300.223(b)(4).

(ccc) Fail to comply with the requirements of any exemption under §300.226(e).

(ddd) Fail to comply with any of the restrictions, prohibitions or requirements specified in §300.229.

(eee) Fail to comply with the handling and release requirements in §300.230.

[74 FR 38554, Aug. 4, 2009, as amended at 74 FR 64010, Dec. 7, 2009; 75 FR 3355, Jan. 21, 2010; 77 FR 51714, Aug. 27, 2012; 77 FR 71512, Dec. 3, 2012; 79 FR 71331, Dec. 2, 2014; 80 FR 8815, Feb. 19, 2015; 80 FR 59048, Oct. 1, 2015; 81 FR 41250, June 24, 2016; 83 FR 33869, July 18, 2018; 86 FR 31181, June 11, 2021; 86 FR 35659, July 7, 2021; 88 FR 30678, May 12, 2023]

§ 300.223 Purse seine fishing restrictions.

None of the requirements of this section apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or within the Overlap Area. All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: The year 2013 starts at 00:00 on January 1, 2013 UTC and ends at 24:00 on December 31, 2013 UTC; and July 1, 2013, begins at 00:00 UTC and ends at 24:00 UTC.

(a) *Fishing effort limits.* This paragraph establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may operate in the Convention Area in the area between 20° N latitude and 20° S latitude in a calendar year.

(1) For calendar year 2019, there is a limit of 1,616 fishing days in the ELAPS.

(2) Beginning in 2020, there is a limit of 1,828 fishing days in the ELAPS per calendar year.

(3) NMFS will determine the number of fishing days spent in the ELAPS in each calendar year using data submitted in logbooks and other available information. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a document in the

FEDERAL REGISTER announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on that specific future date and will remain closed until the end of the calendar year.

(4) Once a fishery closure is announced pursuant to paragraph (a)(3) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the closed area during the period specified in the FEDERAL REGISTER document, except that such vessels are not prohibited from bunkering during a fishery closure.

(b) *Use of fish aggregating devices.* (1) During the periods and in the areas specified in paragraph (b)(2) of this section, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the activities described below in the Convention Area in the area between 20° N latitude and 20° S latitude:

(i) Set a purse seine around a FAD or within one nautical mile of a FAD.

(ii) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(iii) Deploy a FAD into the water.

(iv) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:

(A) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(B) A FAD may be removed from the water and if removed may be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water.

(v) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:

(A) Submerge lights under water;

(B) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(C) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(2) The requirements of paragraph (b)(1) of this section shall apply:

(i) From July 1 through September 30, in each calendar year;

(ii) In any area of high seas, from November 1 through December 31, in each calendar year.

(3)(i) *Activating FADs for purse seine vessels.* A vessel owner, operator, or crew of a fishing vessel of the United States equipped with purse seine gear shall turn on the tracking equipment of an active FAD while the FAD is on-board the vessel and before it is deployed in the water.

(ii) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of a fishing vessel of the United States equipped with purse seine gear shall not have more than 350 drifting active FADs per vessel in the Convention Area at any one time.

(4) FAD design requirements to reduce entanglements. Owners and operators of fishing vessels of the United States equipped with purse seine gear shall ensure that all FADs to be deployed (*i.e.*, are to be placed in the water) from the vessel in the Convention Area comply with the following design requirements:

(i) *Raft.* If the FAD design includes a raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used as part of the structure of the raft, the mesh netting shall have a stretched mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the raft when deployed; and

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(ii) *Subsurface*. Any netting used in the subsurface structure of the FAD must be tightly tied into bundles ("sausages"), or if not tightly tied into bundles, then must be made of stretched mesh size less than 7 centimeters and be configured as a panel that is weighted on the lower end with enough weight to keep the netting vertically taut in the water column.

(c) [Reserved]

(d) *Catch retention*. An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

(1) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(2) If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(3) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

(e) *Observer coverage*. (1) A fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. The requirement in the preceding sentence does not apply to fishing trips that meet one of the following conditions:

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under the jurisdiction of a single nation other than the United States; or,

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N latitude and 20° S latitude; or

(iii) The Pacific Islands Regional Administrator has by temporary specification published in the FEDERAL REGISTER modified or suspended the re-

quirement to carry an observer in accordance with § 300.228.

(2) Owners, operators, and crew of fishing vessels subject to paragraph (e)(1) of this section must accommodate WCPFC observers in accordance with the provisions of § 300.215(c).

(3) Meeting either of the conditions in paragraphs (e)(1)(i) and (ii) of this section does not exempt a fishing vessel from having to carry and accommodate a WCPFC observer pursuant to § 300.215 or other applicable regulations.

(f) *Sea turtle take mitigation measures*.

(1) Possession and use of required mitigation gear. Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must carry aboard the vessel the following gear:

(i) *Dip net*. A dip net is intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of removing sea turtles from fishing gear, bringing sea turtles aboard the vessel when appropriate, and releasing sea turtles from the vessel. The minimum design standards for dip nets that meet the requirements of this section are:

(A) *An extended reach handle*. The dip net must have an extended reach handle with a minimum length of 150 percent of the freeboard height. The extended reach handle must be made of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(B) *Size of dip net*. The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches 3 inches (7.62 cm 7.62 cm) in size.

(ii) *Optional turtle hoist*. A turtle hoist is used for the same purpose as a dip net. It is not a required piece of gear, but a turtle hoist may be carried on board and used instead of the dip net to handle sea turtles as required in paragraph (f)(2) of this section. The minimum design standards for turtle hoists that are used instead of dip nets to meet the requirements of this section are:

(A) *Frame and net.* The turtle hoist must consist of one or more rigid frames to which a bag of mesh netting is securely attached. The frame or smallest of the frames must have a minimum opening (e.g., inside diameter, if circular in shape) of 31 inches (78.74 cm) and be capable of supporting a minimum of 100 lb (34.1 kg). The frame or frames may be hinged or otherwise designed so they can be folded for ease of storage, provided that they have no sharp edges and can be quickly reassembled. The bag mesh openings may be no more than 3 inches × 3 inches (7.62 cm × 7.62 cm) in size.

(B) *Lines.* Lines used to lower and raise the frame and net must be securely attached to the frame in multiple places such that the frame remains stable when lowered and raised.

(2) *Handling requirements.* Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must, if a sea turtle is observed to be enclosed or entangled in a purse seine, a FAD, or other fishing gear, comply with these handling requirements, including using the required mitigation gear specified in paragraph (f)(1) of this section as prescribed in these handling requirements. Any captured or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(i) *Sea turtles enclosed in purse seines.* If the sea turtle is observed enclosed in a purse seine but not entangled, it must be released immediately from the purse seine with the dip net or turtle hoist.

(ii) *Sea turtles entangled in purse seines.* If the sea turtle is observed entangled in a purse seine, the net roll must be stopped as soon as the sea turtle comes out of the water, and must not start again until the turtle has been disentangled and released. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iii) *Sea turtles entangled in FADs.* If the sea turtle is observed entangled in a FAD, it must be disentangled or the FAD must be cut immediately so as to remove the sea turtle. The sea turtle must be handled and released in ac-

cordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iv) *Disentangled sea turtles that cannot be brought aboard.* After disentangling, if the sea turtle is not already on board the vessel and it is too large to be brought aboard or cannot be brought aboard without sustaining further injury, it shall be left where it is in the water, or gently moved, using the dip net or turtle hoist if necessary, to an area away from the fishing gear and away from the propeller.

(v) *Disentangled sea turtles that can be brought aboard.* After disentangling, if the sea turtle is not too large to be brought aboard and can be brought aboard without sustaining further injury, the following actions shall be taken:

(A) Using the dip net or a turtle hoist, the sea turtle must be brought aboard immediately; and

(B) The sea turtle must be handled in accordance with the procedures in paragraphs (f)(2)(vi) and (f)(2)(vii) of this section.

(vi) *Sea turtle resuscitation.* If a sea turtle brought aboard appears dead or comatose, the following actions must be taken:

(A) The sea turtle must be placed on its belly (on the bottom shell or plastron) so that it is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(B) A reflex test must be administered at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(C) The sea turtle must be kept shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes (not covering the nostrils), carapace and flippers is the most effective method of keeping a sea turtle moist; and

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(D) If the sea turtle revives and becomes active, it must be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section, unless NMFS requests that the turtle or part thereof be kept on board and delivered to NMFS for research purposes.

(vii) *Sea turtle release.* After handling a sea turtle in accordance with the requirements of paragraphs (f)(2)(v) and (f)(2)(vi) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(A) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped;

(B) Using the dip net or a turtle hoist to release the sea turtle with little impact, gently release the sea turtle away from any deployed gear; and

(C) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(viii) *Other sea turtle requirements.* No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle or a part thereof for research.

(g) Owners, operators, and crew of fishing vessels of the United States used for commercial fishing for HMS in the Convention Area shall not set or attempt to set a purse seine in the Convention Area on or around a whale shark (*Rhincodon typus*) if the animal is sighted at any time prior to the commencement of the set or the attempted set. This paragraph does not apply to the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or to areas under the national jurisdiction of the Parties to the Nauru Agreement.

(h) The crew, operator, and owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area must release any

whale shark that is encircled in a purse seine net in the Convention Area, and take reasonable steps for its safe release, without compromising the safety of any persons. This paragraph does not apply to the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States.

[74 FR 38554, Aug. 4, 2009, as amended at 76 FR 82183, Dec. 30, 2011; 77 FR 71513, Dec. 3, 2012; 78 FR 30778, May 23, 2013; 80 FR 8815, Feb. 19, 2015; 80 FR 29223, May 21, 2015; 80 FR 51480, Aug. 25, 2015; 80 FR 59048, Oct. 1, 2015; 81 FR 41250, June 24, 2016; 83 FR 33869, July 18, 2018; 84 FR 37148, July 31, 2019; 85 FR 37390, June 22, 2020; 86 FR 31181, June 11, 2021; 88 FR 30678, May 12, 2023]

§ 300.224 Longline fishing restrictions.

None of the requirements of this section apply in the Overlap Area.

(a) *Establishment of bigeye tuna catch limits.* (1) There is a limit of 3,554 metric tons of bigeye tuna per calendar year that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

(2) [Reserved]

(b) *Exception for bigeye tuna landed in territories.* Except as provided in paragraphs (c) and (d), bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will be attributed to the longline fishery of the territory in which it is landed and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(c) *Exception for bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits.* Except as provided in paragraph (d), bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title will be attributed to the longline fishery of American Samoa and will not be counted against the limit established under

paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(d) *Exception for bigeye tuna caught by vessels included in specified fishing agreements under § 665.819(c) of this title.* Bigeye tuna caught by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title will be attributed to the longline fishery of American Samoa, Guam, or the Northern Mariana Islands, according to the terms of the agreement to the extent the agreement is consistent with § 665.819(c) of this title and other applicable laws, and will not be counted against the limit, provided that:

(1) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(2) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch of bigeye tuna exceeds the limit allocated to the territory that is a party to the agreement.

(e) *Announcement of catch limit being reached and fishing prohibitions.* NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the FEDERAL REGISTER announcing that specific prohibitions will be in effect starting on that specific future date and ending December 31 of that calendar year.

(f) *Prohibitions after catch limit is reached.* Once an announcement is made pursuant to paragraph (e) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iv) Bigeye tuna caught by longline gear may be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title, if the agreement provides for bigeye tuna to be attributed to the longline fishery of American Samoa, Guam, or the Northern Mariana Islands, provided that:

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(A) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(B) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch of bigeye tuna exceeds the limit allocated to the territory that is a party to the agreement.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(3) A fishing vessel of the United States may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (e) of this section, in which case the bigeye tuna on board the vessel may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. This prohibition does not apply to a vessel that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands in accordance with paragraphs (b), (c), or (d) of this section, or to a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(4) If a fishing vessel of the United States, other than a vessel that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, in accordance with paragraphs (b), (c), and (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while it is in the Convention Area, be stowed in a manner so as not

to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

[78 FR 58246, Sept. 23, 2013, as amended at 79 FR 64111, Oct. 28, 2014; 80 FR 43636, July 23, 2015; 81 FR 41251, June 24, 2016; 83 FR 33870, July 18, 2018; 85 FR 37390, June 22, 2020]

§ 300.225 Eastern High Seas Special Management Area.

The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS is prohibited from engaging in transshipment in the Eastern High Seas Special Management Area.

[83 FR 33870, July 18, 2018]

§ 300.226 Oceanic whitetip shark and silky shark.

None of the requirements of this section apply in the Overlap Area.

(a) The crew, operator, and owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or silky shark (*Carcharhinus falciformis*) that is caught in the Convention Area unless subject to the provisions of paragraph (c) or (e) of this section.

(b) The crew, operator, and owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any oceanic whitetip shark or silky shark that is caught in the Convention Area as soon as possible after the shark is caught and brought alongside the vessel, and take reasonable steps for its safe release, without compromising the safety of any persons, unless subject to the provisions of paragraph (c) or (e) of this section.

(c) Paragraphs (a) and (b) of this section do not apply in the event that a WCPFC observer collects, or requests the assistance of the vessel crew, operator, or owner in the observer's collection of, samples of oceanic whitetip

shark or silky shark in the Convention Area.

(d) The crew, operator, and owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area must allow and assist a WCPFC observer to collect samples of oceanic whitetip shark or silky shark in the Convention Area, if requested to do so by the WCPFC observer.

(e) Paragraphs (a) and (b) of this section do not apply in the event that any oceanic whitetip shark or silky shark is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark or silky shark could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any oceanic whitetip shark or silky shark surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

[80 FR 8816, Feb. 19, 2015, as amended at 85 FR 37390, June 22, 2020; 88 FR 30678, May 12, 2023]

§ 300.227 Framework for catch and fishing effort limits.

(a) *General.* To implement conservation and management measures adopted by the Commission, the Pacific Islands Regional Administrator may specify limits on catch or fishing effort by fishing vessels of the United States in the Convention Area, and other fishing-related restrictions and requirements (collectively called “limits”). The limits will be specified as may be necessary to carry out the international obligations of the United States under the WCPF Convention and the Act, and will be designed to implement particular provisions of Commission-adopted conservation and management measures. For each specified limit, the Pacific Islands Regional Administrator will specify the area and

period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. In addition to quantitative limits on catches and fishing effort, the Pacific Islands Regional Administrator may specify areas or periods in which particular fishing activities are restricted or prohibited, and other fishing-related requirements. For each specified quantitative limit, the Pacific Islands Regional Administrator will also specify the prohibitions and requirements that would go into effect after the limit is reached and the applicable dates of those prohibitions.

(b) *Application in territorial seas and archipelagic waters.* Unless stated otherwise in particular specifications, the limits specified under the framework shall not apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States.

(c) *Types of limits.* The types of limits that may be specified under this section include, but are not limited to:

(1) Limits on the weight or number of fish or other living marine resources of specific types and/or sizes that may be caught, retained, transshipped, landed, and/or sold;

(2) Limits on the amount of fishing effort that may be expended, such as the amount of time vessels spend at sea (e.g., days at sea) or engaged in fishing (e.g., fishing days), the amount of time vessels spend engaged in particular fishing activities (e.g., trolling hours), and the quantity of specific fishing activities (e.g., number of hooks set; number of longline sets or purse seine sets; number of purse seine sets made on FADs; number of FADs deployed); and

(3) Areas or periods in which particular activities are restricted or prohibited, such as periods during which it is prohibited to set purse seines on FADs or to use FADs in specific other ways.

(d) [Reserved]

(e) *Allocation of limits among sectors or vessels.* (1) The Pacific Islands Regional Administrator may allocate a Commission-adopted limit among particular

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sectors or groups of fishing vessels of the United States, such as for vessels that use different types of fishing gear. In other words, the Pacific Islands Regional Administrator may specify separate limits for different sectors or groups of fishing vessels even when not required to do so under the Commission's conservation and management measures.

(2) The Pacific Islands Regional Administrator may not, under this framework, allocate a Commission-adopted limit among individual fishing vessels of the United States. In other words, the Pacific Islands Regional Administrator may not, under this framework, specify limits for individual fishing vessels of the United States, except in the case where there is only one fishing vessel in a sector or group of fishing vessels that is subject to the limit. This does not preclude NMFS from allocating Commission-adopted limits among individual fishing vessels through other regulations.

(f) *Procedures for specifying limits.* (1) For each specified limit, the Pacific Islands Regional Administrator will publish in the FEDERAL REGISTER a notice of the proposed catch or fishing effort limit specification and a request for public comment on the proposed specification, unless exempted under the Administrative Procedure Act, 5 U.S.C. 553. The specification will include the characteristics of the limit and the restrictions that will go into effect if the limit is reached.

(2) For each specified limit that is subject to prior notice and public comment, the Pacific Islands Regional Administrator will consider any public comment received on the proposed specification, and publish in the FEDERAL REGISTER a notice of the final catch or fishing effort limit specification, if appropriate.

(g) *Notification of limits being reached.* For quantitative limits, NMFS will monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that the specified limit has or will be reached, the Pacific Islands Regional Administrator will publish notification to that effect in the FEDERAL REGISTER.

(h) *Prohibitions after limit is reached.* For quantitative limits, the FEDERAL REGISTER notice published under paragraph (g) of this section will include an advisement that specific activities will be prohibited during a specific period. The notice will specify the prohibitions and their start and end dates. The start date of the prohibitions may not be earlier than 7 days after the date of filing for public inspection at the Office of the Federal Register the notice to be published under paragraph (g) of this section. The prohibited activities may include, but are not limited to, possessing, retaining on board, transshipping, landing, or selling specific types and/or sizes of fish or other living marine resources, and fishing with specified gear types or methods in specified areas. The Pacific Islands Regional Administrator may, based on revised estimates or projections of catch or fishing effort with respect to specified limits, rescind or modify the prohibitions specified under this section. The Pacific Islands Regional Administrator will publish notice of any such rescissions or modifications in the FEDERAL REGISTER.

[80 FR 59048, Oct. 1, 2015]

§ 300.228 Framework to implement emergency decisions.

(a) *General.* To implement short-notice Commission decisions, including intersessional decisions, that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises, the Pacific Islands Regional Administrator may, by temporary specification, modify or suspend regulations in this subpart for a period less than one year. A temporary specification under this paragraph (a) will remain in effect no longer than 30 days after the expiration of the underlying Commission decision.

(b) *Procedures for regulatory modifications or suspensions.* The Pacific Islands Regional Administrator will publish in the FEDERAL REGISTER each temporary specification issued under paragraph (a) of this section. The temporary specification will identify the basis for the modification or suspension (*i.e.*, a description of the Commission decision),

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the changes to the regulations, and the duration of the changes.

(c) *Procedures for revoking regulatory modifications or suspensions.* The Pacific Islands Regional Administrator may revoke any temporary specification issued under paragraph (a) of this section by notification published in the FEDERAL REGISTER.

(d) *Limitations on regulatory modifications or suspensions.* Temporary specifications issued under paragraph (a) of this section shall be limited to the following:

(1) Modifications or suspensions of the purse seine observer coverage requirements at §300.223(e), including the Pacific Islands Regional Administrator's suspension of some or all of the requirements on a fleet-wide or individual vessel basis, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information;

(2) Modifications or suspensions of the regulations at §300.216(b)(1) prohibiting at-sea transshipment for purse seine vessels, including suspensions of some or all of the prohibitions, prior notification to an address specified by the Pacific Islands Regional Administrator for an at-sea transshipment, and authority of the Pacific Islands Regional Administrator to suspend the prohibitions for particular transshipments; and

(3) Modifications or suspensions of the regulations at §§300.215(d) and 300.216(b)(2) regarding at-sea transshipment observer requirements, including suspensions of some or all of the requirements, the Pacific Islands Regional Administrator's authorization to suspend some or all of the requirements for particular transshipments, requiring the carrying of observers other than WCPFC observers, requirements to carry electronic monitoring devices in lieu of observers, and requirements to collect and submit photographic or written information.

(e) *Covid-19-related actions.* Notwithstanding paragraph (a) of this section, a temporary specification to modify or suspend regulations related to the COVID-19 pandemic may be continued,

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as appropriate, until December 31, 2023, after which time such temporary specifications shall be effective for a period of less than one year.

[86 FR 31181, June 11, 2021, at amended at 87 FR 34586, June 7, 2022]

§ 300.229 Mobulid ray restrictions.

The requirements of this section apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. For the purpose of this section, mobulid ray is defined as any ray in the family Mobulidae, which includes manta rays and devil rays (*Mobula spp.*).

(a) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot set or attempt to set on or around a mobulid ray if the animal is sighted at any time prior to the commencement of the set or the attempted set.

(b) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of a mobulid ray, unless subject to the provisions of paragraphs (d), (e) and (f) of this section.

(c) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any mobulid ray, as soon as possible, and must ensure that all reasonable steps are taken to ensure its safe release, without compromising the safety of any persons, unless subject to the provisions of paragraphs (d), (e) and (f) of this section.

(d) Paragraphs (b) and (c) of this section do not apply in the event that a WCPFC observer collects, or requests the assistance of the vessel crew, operator, or owner in the collection of, samples of a mobulid ray in the Convention Area.

(e) The crew, operator, and owner of a vessel must allow and assist a WCPFC observer to collect samples of a mobulid ray in the Convention Area, if requested to do so by a WCPFC observer.

(f) Paragraphs (b) and (c) of this section do not apply in the event that a mobulid ray is not seen by the crew,

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operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, a mobulid ray could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole ray to the responsible government authorities or discard the animal at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any mobulid ray surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

[88 FR 30679, May 12, 2023]

§ 300.230 Shark handling and release.

(a) The requirements of paragraph (b) of this section apply to all fishing vessels of the United States used for commercial fishing for HMS. The requirements apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. The requirements apply only if there is a WCPFC observer or camera monitoring device on board the fishing vessel.

(b) Prior to releasing any shark that is caught during fishing operations and not brought on board the fishing vessel, the owner and operator, without compromising the safety of any persons, shall ensure that the shark is brought alongside the vessel for identification purposes.

[88 FR 30679, May 12, 2023]

Subpart P—Vessels on IUU Vessel Lists

SOURCE: 75 FR 59142, Sept. 27, 2010, unless otherwise noted.

§ 300.300 Purpose and scope.

(a) This subpart implements internationally-adopted measures pertaining to foreign vessels determined to have engaged in illegal, unreported, and unregulated (IUU) fishing and placed on IUU vessel lists of the:

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT),

(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),

(3) Northwest Atlantic Fisheries Organization (NAFO),

(4) Western and Central Pacific Fisheries Commission (WCPFC),

(5) Inter-American Tropical Tuna Commission (IATTC), and

(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP).

(b) For purposes of this subpart, the above organizations are referred to as regional fishery management organizations (RFMOs). Each of these RFMOs adopts or approves an IUU vessel list in accordance with their respective rules and procedures. The lists are publicly available at each RFMO's Web site. The regulations in this subpart apply to all persons subject to the jurisdiction of the United States, wherever they are.

§ 300.301 Definitions.

In addition to the terms defined in § 300.2, the terms used in this subpart have the following meanings.

Landing means to begin to offload fish, or to offload fish from any vessel.

Listed IUU Vessel means a vessel that is included on a final IUU vessel list adopted or approved by an RFMO to which the United States is a party.

Processing means the preparation or packaging of fish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil.

Transshipping means the offloading, unloading, or transferring of fish or fish products from one vessel to another.

§ 300.302 Port entry by foreign, listed IUU vessels.

The Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, deny a foreign, listed IUU vessel entry to any port or place subject to the jurisdiction of the United States, except in cases of *force majeure*.

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§ 300.303 Port access by foreign, listed IUU vessels.

If a foreign, listed IUU vessel is allowed to enter a port or place subject to the jurisdiction of the United States, the Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, take one or more of the following actions:

- (a) Inspect the vessel;
- (b) Deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or
- (c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, transshipping or landing product.

§ 300.304 Prohibitions.

(a) It is unlawful for a foreign, listed IUU vessel denied entry under § 300.302 to enter any port or place subject to the jurisdiction of the United States.

(b) It is unlawful for any foreign, listed IUU vessel to obtain port services or engage in commercial transactions, or attempt to obtain such services or engage in such transactions, if such activities have been denied or prohibited under § 300.303(b) and/or § 300.303(c), or if the vessel has been denied entry under § 300.302.

(c) It is unlawful for any person, without prior authorization from the Assistant Administrator, to engage in commercial transactions with listed IUU vessels. Such transactions include, but are not limited to:

- (1) Transshipment;
- (2) Processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel;
- (3) Joint fishing operations;
- (4) Providing supplies, fuel, crew, or otherwise supporting a listed IUU vessel; or
- (5) Chartering or entering in a chartering arrangement with a listed IUU vessel.

(d) The prohibitions listed in § 300.304(c) shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO conservation and management measures, including

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in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

Subpart Q—International Trade Documentation and Tracking Programs

SOURCE: 81 FR 51137, Aug. 3, 2016, unless otherwise noted.

§ 300.320 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), the Magnuson-Stevens Fishery Conservation and Management Act, the Tuna Conventions Act of 1950, and the Antarctic Marine Living Resources Convention Act of 1984. These regulations implement the applicable recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean, the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the eastern Pacific Ocean, and the Commission for the Conservation of Antarctic Marine Living Resources so far as they affect vessels and persons subject to the jurisdiction of the United States. These regulations are also issued under the Marine Mammal Protection Act of 1972, the Dolphin Protection Consumer Information Act and the Security and Accountability for Every Port Act of 2006. The requirements in this subpart may be incorporated by reference in other regulations under this title.

§ 300.321 Definitions.

ACE Implementation Guide for NMFS means the data set and document imaging requirements set forth in the Appendices to the Customs and Trade Automated Interface Requirements issued by Customs and Border Protection.

Aggregated Harvest Report means a record made at a single collection point on a single calendar day for aggregated catches by multiple small-

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scale fishing vessels (20 measured gross tons or less or 12 meters length overall or less) offloaded at that collection point on that day, or for a landing by a vessel to which the catches of one or more small-scale vessels were transferred at sea. An Aggregated Harvest Report also means a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers 1,000 kg or less to that collection point or processing facility on that day. An Aggregated Harvest Report may not be used for information for catches from vessels greater than 20 measured gross tons or 12 meters length overall, and deliveries of more than 1000 kg from aquaculture facilities.

AMLR trade program means the program for monitoring trade in Antarctic marine living resources including, inter alia, *Dissostichus* species as set forth in subpart G of this part.

Automated Commercial Environment (ACE) means, for purposes of this subpart, the central point through which import shipment data required by multiple agencies is filed electronically to Customs and Border Protection (CBP).

Automated Export System (AES) means, for purposes of this subpart, the central point through which export shipment data required by multiple agencies is filed electronically to Customs and Border Protection (CBP).

Catch and Statistical Document/Documentation means a document or documentation, in paper or electronic form, accompanying regulated seafood imports and exports that is submitted by importers and exporters to document compliance with TTVP, AMLR trade program, and HMS ITP trade documentation programs or the Seafood Traceability Program as described in this subpart.

CBP means U.S. Customs and Border Protection, Department of Homeland Security.

Documentation and data sets required under this subpart refers to documentation and data that must be submitted by an importer or exporter to NMFS at the time of, or in advance of, import, export, or re-export, as applicable for

those seafood products regulated under the TTVP, AMLR trade program, and HMS ITP or the Seafood Traceability Program as described in this subpart. The required data sets and document images to be submitted for specific programs and transactions are posted by CBP as indicated in § 300.323.

Fish or fish products regulated under this subpart means species and products containing species regulated under this subpart, and the AMLR trade program, the HMS ITP, the TTVP, or the Seafood Traceability Program.

Harvest Event means, for wild-capture fisheries, the landing of fish in port or offloading of fish from a fishing vessel that caught the fish to a carrier vessel at sea or in port, and for aquaculture production, the delivery of fish from the facility to a consolidator or a processor. For wild-capture fisheries, the harvest event is considered to occur at the fishing trip level, such that the harvest event concludes at the time catch is landed or offloaded from the catching vessel. For fishing trips occurring in more than one area, each area fished during the trip must be identified in the report on the harvest event.

HMS ITP means the Highly Migratory Species International Trade Program which includes trade monitoring and/or reporting and consignment documentation for trade of bluefin tuna, southern bluefin tuna, frozen bigeye tuna, swordfish, and shark fins as described in subpart M of this part.

Import has the same meaning as 16 U.S.C. 1802(22). Import includes, but is not limited to, customs entry for consumption, withdrawal from customs bonded warehouse for consumption, or entry for consumption from a foreign trade zone.

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.222.

Seafood Traceability Program means the data reporting and recordkeeping requirements established under § 300.324 and includes the permitting requirements of § 300.322, and the requirements under § 300.323 as they pertain to species or species group subject to the Seafood Traceability Program.

TTVP means the Tuna Tracking and Verification Program, which regulates

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trade in certain fishery products as set forth in § 216.24(f)(2) of this title.

[81 FR 51137, Aug. 3, 2016, as amended at 81 FR 88996, Dec. 9, 2016]

§ 300.322 International Fisheries Trade Permit.

(a) *General.* Any person, including a resident agent for a nonresident corporation (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this sub-part from any ocean area, must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of, importation, exportation or re-exportation. If authorized under other regulations under this title or other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings. Only persons resident in the United States are eligible to apply for the IFTP.

(b) *Application.* A person must apply for an IFTP electronically via a Web site designated by NMFS. The application must be submitted electronically with the required permit fee payment, at least 30 days before the date upon which the applicant wishes the permit to be made effective.

(c) *Issuance.* Except as provided in subpart D of 15 CFR part 904, NMFS will issue an IFTP within 30 days of receipt of a completed application. NMFS will notify the applicant of any deficiency in the application, including failure to provide information, documentation or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* An IFTP issued under this section is valid for a period of one year from the permit effective date.

(e) *Alteration.* Any IFTP that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* An IFTP issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) *Inspection.* The permit holder must keep the IFTP issued under this section at his/her principal place of business. The IFTP must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must be submitted via a Web site designated by NMFS at the time of application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the permit holder must report the change to NMFS via a Web site designated by NMFS. If a change in permit information is not reported within 30 days, the permit is void as of the 30th day after such change.

(l) *Renewal.* Persons must apply annually for an IFTP issued under this section. A renewal application must be

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submitted via a Web site designated by NMFS, at least 15 days before the permit expiration date to avoid a lapse in permitted status. NMFS will renew a permit provided that: The application for the requested permit renewal is complete; all documentation and reports required under this subpart and the Magnuson-Stevens Act, Atlantic Tuna Conventions Act, the Tuna Conventions Act, the Marine Mammal Protection Act, the Dolphin Consumer Protection Information Act, and the Antarctic Marine Living Resources Act have been submitted, including those required under §§216.24, 216.93, 300.114, 300.183, 300.185, 300.186, 300.187 and 635.5 of this title; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

§ 300.323 Reporting and recordkeeping requirements.

(a) *Reporting.* Any person, including a resident agent for a nonresident entity (see 19 CFR 141.18), who imports as defined in §300.321, exports, or re-exports fish or fish products regulated under this subpart must file all data sets, reports, and documentation as required under the AMLR program, HMS ITP, TTVP and Seafood Traceability Program, and under other regulations that incorporate by reference the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) Appendix PGA (<https://www.cbp.gov/document/guidance/appendix-pga>). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (<https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

(b) *Recordkeeping.* A paper or electronic copy of all documentation and data sets required under this subpart, and all supporting records upon which an entry filing or export declaration is made, must be maintained by the im-

porter of record or the exporting principal party in interest as applicable, and made available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import, export or re-export.

[81 FR 88997, Dec. 9, 2016]

§ 300.324 Seafood Traceability Program.

This section establishes a Seafood Traceability Program which has data reporting requirements at the time of entry for imported fish or fish products and recordkeeping requirements for fish or fish products entered into U.S. commerce. The data reported and retained will facilitate enforcement of section 307(1)(Q) of the Magnuson-Stevens Act and the exclusion of products from entry into U.S. commerce that are misrepresented or the product of illegal or unreported fishing. The data reporting and recordkeeping requirements under the program enable verification of the supply chain of the product offered for entry back to the harvesting event(s). In addition, the permitting requirements of §300.322 pertain to importers of products within the scope of the program.

(a)(1) For species or species groups subject to this Seafood Traceability Program, data is required to be reported and retained under this program for all fish and fish products, whether fresh, frozen, canned, pouched, or otherwise prepared in a manner that allows, including through label or declaration, the identification of the species contained in the product and the harvesting event. Data is not required to be reported or retained under this program for fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar fish products for which it is not technically or economically feasible to identify the species of fish comprising the product or the harvesting event(s) contributing to the product in the shipment.

(2) The following species or species groups are subject to this Seafood Traceability Program: Atlantic Cod; Pacific Cod; Blue Crab; Red King Crab; Dolphinfish (Mahi Mahi); Grouper; Red Snapper; Sea Cucumber; Sharks; Swordfish; Tunas (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin). The

harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. Compliance with the requirements of the Seafood Traceability Program for these species or groups of species is mandatory beginning January 1, 2018.

(3) The following species or species groups are also subject to this Seafood Traceability Program: Abalone and Shrimp. The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. The Seafood Traceability Program for these species or species groups consists of two components:

(i) The data reporting requirements of paragraphs (b)(1) through (3) and (c) of this section in conjunction with § 300.323(a); and

(ii) The permit requirements of § 300.322, the IFTP number reporting requirement in paragraph (b)(4) of this section in conjunction with § 300.323(a), and the recordkeeping requirements of § 300.323(b) which includes the recordkeeping of all information specified in paragraphs (b) and (e) of this section.

(b) In addition to data reporting requirements applicable, pursuant to other authorities and requirements set out elsewhere in U.S. law and regulation (*e.g.*, under other NMFS programs or U.S. Customs and Border Protection (CBP) requirements), to the particular commodity offered for entry, the importer of record is required to provide the following data set in ACE at the time of entry for each entry containing the species or species groups listed under paragraph (a) of this section:

(1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of fishing authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear used to harvest the fish; Name(s) of farm or aquaculture facility. Vessel-, farm-, or aquaculture facility-specific information is not required if the importer of record provides information from an Aggregated Harvest Report, unless the product offered for entry is subject to another NMFS program that requires

data reporting or documentation at an individual vessel, farm, or aquaculture facility level.

(2) Information on the fish that was harvested and processed: Species of fish (Aquatic Sciences Fishery Information System 3-alpha code as listed at <http://www.fao.org/>); Product form(s) at the point of first landing whether unprocessed or processed prior to landing/delivery; Quantity and/or weight of the product(s) as landed/delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this paragraph (b)(2), but may provide the total quantity and/or weight of the product(s) as landed/delivered on the date of the report.

(3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; Location of aquaculture facility; Point(s) of first landing; Date(s) of first landing, transshipment or delivery; Name of entity(ies) (processor, dealer, vessel) to which fish was landed or delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this paragraph (b)(3). Some product offered for entry may be comprised of products from more than one harvest event and each such harvest event relevant to the contents of the shipment must be documented; however, specific links between portions of the shipment and a particular harvest event are not required.

(4) The NMFS-issued IFTP number for the importer of record.

(c) The importer of record, either directly or through an entry filer, is required to submit the data under paragraph (b) of this section through ACE as a message set and/or image files in conformance with the procedures and formats prescribed by the NMFS Implementation Guide and CBP and made available at: <http://www.cbp.gov/trade/ace/catair>. All harvest events contributing to the inbound shipment must be reported, but links between portions of the shipment and particular harvest events are not required.

(d) Import shipments of fish or fish products subject to this program may be selected for inspection and/or the information or records supporting entry may be selected for audit, on a pre- or

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post-release basis, in order to verify the information submitted at entry. To support such audits, the importer must retain records of the information reported at entry under paragraph (b) of this section in electronic or paper format, and make them available for inspection, at the importer's place of business for a period of two years from the date of the import.

(e) In addition to the entry record-keeping requirements specified at 19 CFR part 163 and § 300.323(b), the importer of record is required to maintain records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce back to the point of harvest, including individual or Aggregated Harvest Reports, if any, and information that identifies each custodian of the fish or fish product (such as any transshipper, processor, storage facility or distributor). The latter may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. The importer must retain such chain-of-custody records in electronic or paper format, and make them available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import.

[81 FR 88997, Dec. 9, 2016]

§ 300.325 Prohibitions.

In addition to the prohibitions specified in §§ 300.4, 300.117, and 300.189 and 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate any provision of this subpart, or the conditions of any IFTP issued under this subpart;

(b) Import, export or re-export fish or fish products regulated under this subpart, including imports or exports otherwise eligible for informal filing procedures or the de minimis value exemption from filing requirements under CBP procedures, without a valid IFTP as required under § 300.322 or without submitting complete and accurate information as required under § 300.323; and

(c) Import species listed in § 300.324(a) without a valid IFTP or without sub-

mitting complete and accurate information as required under § 300.324(b) and (c) or without maintaining for inspection records as required under § 300.324(d) and (e).

[81 FR 88998, Dec. 9, 2016]

Subpart R—High Seas Fisheries

AUTHORITY: 16 U.S.C. 5501 *et seq.*

SOURCE: 80 FR 62495, Oct. 16, 2015, unless otherwise noted. Redesignated at 81 FR 51137, Aug. 3, 2016.

§ 300.330 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas and to ensure that such vessels do not operate in contravention of international conservation and management measures recognized by the United States.

§ 300.331 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in section 300.2, the Act, or the Agreement, the definition in this section shall apply.

Bottom fishing means fishing using gear that is likely to contact the seafloor during the normal course of fishing operations.

Enhanced mobile transceiver unit (EMTU) is defined in 50 CFR 600.1500.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

High seas fishing permit means a permit issued under this subpart.

High seas fishing vessel means any vessel of the United States used or intended for use on the high seas for the

purpose of the commercial exploitation of living marine resources and as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation. Support vessels include vessels that process or transship fish on the high seas; provide supplies, personnel or fuel on the high seas to other fishing vessels; or conduct other activities in support of, or in preparation for fishing.

International conservation and management measures means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

Observer means any person serving in the capacity of an observer employed by NMFS, either directly or under contract with a third party, or certified as an observer by NMFS.

Office Director means the director of the NMFS Office for International Affairs and Seafood Inspection.

Regional Administrator means any one of the Directors of a NMFS regional office, defined under § 300.2.

Transship or transshipment means off-loading or receiving or otherwise transferring fish or fish products from one fishing vessel to another. Excluded from this definition is net sharing, which means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

Vessel monitoring system (VMS) is defined in 50 CFR 600.1500.

§ 300.332 Issuing offices.

Any Regional Administrator or the Office Director may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Administrator

or the Office Director, applicants are encouraged to submit their applications (with envelopes marked “Attn: HSFCA Permits”) to the Regional Administrator or the Office Director with whom they normally interact on fisheries matters.

§ 300.333 Vessel permits.

(a) *Eligibility.* (1) Any vessel owner or operator of a high seas fishing vessel is eligible to receive a permit for a fishery authorized on the high seas under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator or Office Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures have no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if it is determined by the Regional Administrator or Office Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Applicability.* Any high seas fishing vessel used for fishing, as defined under § 300.2, on the high seas must have on board a valid permit issued under this subpart.

(c) *Application.* Permit application forms are available from the NMFS Web site or from any Regional Administrator or the Office Director. Failure

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to submit a complete and accurate application, along with all other required documentation and the specified fee will preclude issuance of a permit. To apply for a permit under this subpart, the owner or operator of a high seas fishing vessel must submit the following to a Regional Administrator or Office Director:

(1) A complete, accurate application form signed by the vessel owner or operator.

(2) Information required under this section and §300.334(a).

(3) A color photograph showing an entire bow-to-stern side-view of the vessel in its current form and appearance. The photograph must clearly and legibly display the vessel name and identification markings. If the vessel's form or appearance materially changes (such as the vessel is painted another color, the vessel's identification markings change, or the vessel undergoes a structural modification) the vessel owner and operator must submit a new photograph of the vessel within 15 days of the change.

(4) For vessels with state registration instead of U.S. Coast Guard documentation, the applicant must supply additional vessel information that NMFS may request.

(5) The fee specified in the application form. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit. NMFS charges this fee to recover the administrative expenses of permit issuance, and the amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook.

(d) *Permit issuance and validity.* (1) Except as provided for in subpart D of 15 CFR part 904, and subject to paragraphs (a), (c), and (d)(2) and (3) of this section, the Regional Administrator or Office Director will issue a permit, which will include applicable conditions or restrictions, within 15 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Administrator or Office Director will not issue a permit unless an EMTU has been installed and activated on the vessel in accordance with §300.337(c)(2).

(3) The Regional Administrator or Office Director will not issue a permit unless the applicant holds a valid permit for the subject vessel for any U.S. domestic fisheries related to the authorized high seas fishery.

(4) Except as otherwise provided, permits issued under this subpart are valid for 5 years from the date of issuance. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or state registration must be kept current. A permit issued under this subpart is void when the vessel owner or the name of the vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(5) A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(e) *Display.* A valid permit, or a copy thereof, issued under this subpart must be on board any high seas fishing vessel while operating on the high seas and available for inspection by an authorized officer.

(f) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported in writing to the Regional Administrator or Office Director who issued the permit within 15 days of such changes.

(g) *Renewal.* Application for renewal of a permit prior to its expiration is the responsibility of the permit holder and may be completed per §300.333(c). The Regional Administrator or Office Director will not consider a permit renewal application to be complete until the permit holder satisfies all required fishing activity report requirements under the permit and §300.341. The Regional Administrator or Office Director will not issue a renewed permit unless an EMTU has been activated on the vessel in accordance with §300.337(c)(2) and the applicant holds a valid permit for the subject vessel for any U.S. domestic fisheries related to the authorized high seas fishery.

(h) *Marine mammals and ESA-listed species.* Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to take marine mammals or ESA-listed species. No marine mammals or ESA-listed species may be taken in the course of fishing operations unless the taking is allowed under the Marine Mammal Protection Act or the Endangered Species Act (ESA), pursuant to regulations, an authorization, or permit granted by NMFS or the U.S. Fish and Wildlife Service.

(i) *Permit Status Changes.* NMFS may modify, suspend, or revoke a permit issued under this subpart if permitted activities may impact living marine resources in ways that were not considered at the time of permit issuance; are in contravention of an international conservation and management measure; or violate any applicable law. NMFS will notify an affected permit holder of any potential change in permit status by contacting the permit holder at the address of record provided on the permit application or as updated pursuant to paragraph (f) of this subsection and will provide an opportunity to respond, consistent with the Administrative Procedure Act and other applicable law.

§ 300.334 Fisheries authorized on the high seas.

(a) *General.* When applying for a permit under § 300.333, the owner or operator of a high seas fishing vessel must identify in the application the authorized fisheries in which he or she intends to fish. More than one authorized fishery may be selected. The following fisheries are authorized on the high seas:

- (1) 50 CFR part 300, subpart C—Eastern Pacific Tuna Fisheries.
- (2) 50 CFR part 300, subpart D—South Pacific Tuna Fisheries.
- (3) 50 CFR part 300, subpart G—Antarctic Marine Living Resources.
- (4) 50 CFR part 635—Atlantic Highly Migratory Species Fisheries.
- (5) 50 CFR part 660, subpart K—U.S. West Coast Fisheries for Highly Migratory Species.
- (6) 50 CFR part 665, subpart F—Western Pacific Pelagic Fisheries.

(7) South Pacific Albacore Troll Fishery.

(8) Northwest Atlantic Fishery.

(b) *Requirements for authorized fisheries.* For each of the authorized fisheries specified on the high seas fishing permit, the owner or operator of the high seas fishing vessel must:

(1) Abide by the regulations, set forth in other parts of this chapter and Chapter VI, governing those authorized fisheries while operating on the high seas;

(2) Obtain and renew any appropriate permits or authorizations; and

(3) Notify the Regional Administrator or Office Director who issued the permit immediately in the event that a species listed as threatened or endangered under the ESA is taken incidental to the fishing activities without authorization under a relevant incidental take statement.

(c) *Change in authorized fisheries.* If a high seas fishing permit holder elects to change the authorized fisheries specified on the permit, he or she shall notify the Regional Administrator or Office Director who issued the permit of the change(s) and shall obtain the underlying permits for the authorized fisheries prior to engaging in the fishery on the high seas. Per the process under § 300.333(d), the Regional Administrator or Office Director will then issue a revised high seas fishing permit which will expire 5 years from the original effective date.

(d) *Revision of authorized fisheries list.* Through rulemaking, NMFS will add a fishery to, or delete a fishery from, the list in paragraph (a) of this section. NMFS may add or delete fisheries from the list after completing any analyses required under the Endangered Species Act, Marine Mammal Protection Act, National Environmental Policy Act, and other applicable laws. In taking such action, NMFS, in consultation with the relevant Regional Fishery Management Council(s) where appropriate, will consider, among other things, whether:

(1) The proposed fishing activities would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or species listed as threatened or endangered under the Endangered Species Act;

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(2) The proposed fishing activities would be inconsistent with relevant fishery management plans and their implementing regulations or other applicable law;

(3) Insufficient mechanisms exist to effectively monitor the activities of vessels engaged in the proposed fishing activities; or

(4) The proposed fishing activities would contravene international conservation and management measures recognized by the United States.

(e) *Request for revision of authorized fisheries list.* A person may submit a written request to the Office Director to add a fishery to or delete a fishery from the list. A request to delete a fishery from the list of authorized fisheries must include the name of the fishery; information that addresses considerations under paragraph (d) of this section; and, if requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws. A request to add a fishery to the list of authorized fisheries must include the following information:

(1) The species (target and incidental) expected to be harvested and the anticipated amounts of such harvest and bycatch;

(2) The approximate times and places when fishing is expected to take place, the number and type of vessels expected to participate, and the type, size, and amount of gear expected to be used;

(3) A description of the specific area that may be affected by the fishing activities;

(4) A description of any anticipated impacts on the environment, including impacts on fisheries, marine mammals, and species listed as threatened or endangered under the ESA or their critical habitat;

(5) Other information that addresses considerations under paragraph (d) of this section; and

(6) If requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws.

(7) Once all required information is received to proceed with consideration of a request, NMFS will publish in the FEDERAL REGISTER a proposed rule,

noting receipt of the request to add an authorized fishery, and inviting information and comments. Relevant information received during the comment period may be considered by NMFS and, where appropriate, the relevant Regional Fishery Management Council(s), in analyzing potential environmental impacts of the fisheries and developing any conditions or restrictions. Based on its analysis, considerations under paragraph (d) of this section, and other relevant considerations, NMFS will publish its decision on the request in the FEDERAL REGISTER.

(f) *Deletion of a fishery from the authorized fisheries list.* NMFS will delete (i.e., deauthorize) a fishery under paragraph (d) or (e) of this section through publication of a final rule. NMFS will also provide notice to affected permit holders by email and by Registered Mail at the addresses provided to NMFS in the high seas permit application. When a fishery is deleted from the list, any activities on the high seas related to that fishery are prohibited as of the effective date of the final rule. In addition, the high seas permit will be voided unless the permit holder notifies NMFS that he or she elects to change to another authorized high seas fishery or continue in any other authorized fisheries noted on the permit. Once the applicant so notifies NMFS and, if necessary, secures any underlying permits necessary for participation in another authorized high seas fishery, the Regional Administrator or Office Director will then issue a revised high seas fishing permit per the process under §300.333(d). The revised permit will expire 5 years from the original effective date.

§ 300.335 Bottom fishing.

(a) Bottom fishing may be permitted on the high seas when authorized by international conservation and management measures recognized by the United States. For bottom fishing activity not subject to international conservation measures recognized by the United States, a person who seeks to engage in such fishing must request authorization of a new high seas fishery as described in §300.334(e) and then, if the fishery is authorized, must obtain all applicable permits including a high

seas fishing permit issued under § 300.333. NMFS may specify conditions and restrictions in the permit to mitigate adverse impacts on VMEs, which may include the types of conditions that have been adopted in relevant RFMO measures recognized by the United States.

(b) *Permit.* To be permitted under this section, the owner or operator of a high seas fishing vessel must follow the procedures under § 300.334(e) or, if he or she seeks to change an existing permit, must follow the procedures under § 300.334(c).

§ 300.336 Vessel identification.

(a) *General.* A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking.* Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its international radio call sign (IRCS) or, if not assigned an IRCS, must be marked (in order of priority) with its Federal, state, or other documentation number appearing on its high seas fishing permit and, if a WCPFC Area Endorsement has been issued for the vessel under § 300.212, that documentation number must be preceded by the characters “USA” and a hyphen (that is, “USA-”);

(ii) The markings must be displayed at all times on the vessel’s side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels

25 meters (m) and over in length overall, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length overall, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length overall, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length overall, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length overall, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length overall, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be $h/6$;

(ix) The space between letters and/or numbers must not exceed $h/4$ nor be less than $h/6$;

(x) The space between adjacent letters having sloping sides must not exceed $h/8$ nor be less than $h/10$;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than $h/6$; and

(xiii) The marks and the background must be maintained in good condition at all times.

§ 300.337 Requirements for Enhanced Mobile Transceiver Units (EMTUs).

(a) *Vessel position information.* The owner or operator of a vessel issued a permit under this subpart, or for which such permit is required, must have installed on board the vessel a NMFS type-approved enhanced mobile transceiver unit (EMTU). The operator or owner of the vessel must ensure that the EMTU is operational and properly reporting positions to NMFS as required by this section, except when exempt under paragraph (d)(1) or (2) of this section. If the vessel is also subject to EMTU requirements in other

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parts of this title, the more restrictive requirements apply.

(b) *Contact information and business hours.* With respect to the requirements in this section, vessel owners and operators should consult with the divisional office of the NOAA Office of Law Enforcement (OLE) in, or nearest, the Region issuing the permit under this subpart. The OLE VMS Helpdesk in OLE headquarters office may also be contacted.

(c) *EMTU installation and activation—*
(1) *EMTU installation.* The vessel owner or operator shall obtain and have installed on the fishing vessel, by a qualified marine electrician and in accordance with any instructions provided by the VMS Helpdesk or OLE divisional office, a NMFS type-approved EMTU. OLE is authorized to receive and relay transmissions from the EMTU. The vessel owner and operator shall arrange for a type-approved mobile communications service to receive and transmit position reports and email communications from the EMTU to OLE. NMFS makes available lists of type-approved EMTUs and mobile communications service providers. Vessel owners must ensure that the EMTU and communications service hardware purchased is type-approved for all fisheries and regions in which their vessel will be operating.

(2) *EMTU activation.* When an EMTU is installed or reinstalled or the mobile communications service provider changes, or if directed by OLE, the vessel owner and operator shall, prior to leaving port:

(i) Turn on the EMTU to make it operational;

(ii) Submit a VMS Installation and Activation Certification form, or an activation report as directed by OLE, to the OLE divisional office within or nearest to the region issuing the permit under this subpart; and

(iii) Receive confirmation from OLE that transmissions are being received properly from the EMTU.

(d) *EMTU operation.* Unless otherwise provided below, and subject to more restrictive requirements where applicable, the vessel owner or operator shall continuously operate the EMTU so that it automatically transmits posi-

tion information to OLE, once every hour or as directed by OLE.

(1) *In-port exemption:* The EMTU may be powered down when the vessel will remain at a dock or permanent mooring for more than 72 consecutive hours and after the notice required in paragraph (d)(3) of this section is submitted to OLE. When powering up the EMTU after the in-port exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section at least 2 hours before leaving port or mooring.

(2) *Long-term exemption:* The EMTU may be powered down if the vessel will not operate on the high seas, or in any fishery that requires EMTU operation, for more than 30 consecutive days and after the notice required in paragraph (d)(3) of this section is submitted. When powering up the EMTU from the long-term exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section.

(3) Prior to each power-down of the EMTU, under paragraph (d)(1) or (2) of this section, the vessel owner or operator must report to the OLE divisional office in, or nearest, the Region issuing the permit under this subpart during business hours, via email or other means as directed by OLE: the vessel's name; the vessel's official number; the intent to power down the EMTU; the reason for power-down; the port where the vessel is docked or area where it will be operating; and the full name, telephone, and email contact information for the vessel owner or operator.

(4) When powering up the EMTU, the vessel owner or operator must report to the OLE divisional office in, or nearest, the Region issuing the permit under this subpart during business hours, via email or other means as directed by OLE: The fact that the EMTU has been powered up; the vessel's name; the vessel's official number; port name; intended fishery; and full name, telephone, and email contact information for the vessel owner or operator.

(5) If the EMTU is powered up after a long-term or in-port exemption, the vessel owner must receive confirmation from the OLE divisional office in,

or nearest, the Region issuing the permit under this subpart that EMTU transmissions are being received properly before leaving port, entering the high seas, or entering a fishery that requires EMTU operation.

(e) *Failure of EMTU.* If the vessel owner or operator becomes aware that the EMTU has become inoperable or that transmission of automatic position reports from the EMTU has been interrupted, or if notified by OLE or the U.S. Coast Guard that automatic position reports are not being received from the EMTU or that an inspection of the EMTU has revealed a problem with the performance of the EMTU, the vessel owner or operator shall comply with the following requirements:

(1) If the vessel is in port, the vessel owner or operator shall repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section before the vessel leaves port.

(2) If the vessel is at sea, the vessel owner, operator, or designee shall contact the OLE divisional office in, or nearest, the Region issuing the permit under this subpart by telephone or email at the earliest opportunity during business hours and identify the caller, vessel name, vessel location, and the type of fishing permit(s). The vessel operator shall follow the instructions provided by the OLE divisional office, which could include: Ceasing fishing, stowing fishing gear, returning to port, or submitting periodic position reports at specified intervals by other means. The vessel owner or operator must repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section within 30 days or before the vessel leaves port, whichever is sooner.

(f) *Related VMS requirements.* Unless specified otherwise in the high seas fishing permit, a vessel owner's and operator's compliance with requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs will satisfy the requirements of this section, if the requirements are the same or more restrictive than those in this section and provided that:

(1) On the high seas, the EMTU is operated continuously and position infor-

mation is automatically transmitted a minimum of once every hour;

(2) The EMTU is type-approved by NMFS;

(3) OLE is authorized to receive and relay transmissions from the EMTU; and

(4) The requirements of paragraph (d) of this section are complied with. If the EMTU is owned by NMFS, the requirement under paragraph (e) of this section to repair or replace the EMTU will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the EMTU complies with the requirements specified in paragraph (c)(2) of this section before the vessel leaves port.

(g) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation, operation, and maintenance of the EMTU and for all charges levied by vendors as necessary to ensure the transmission of automatic position reports to OLE as required in paragraph (c) of this section. However, if the EMTU is being carried and operated in compliance with the requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs, the vessel owner and operator shall not be responsible for any costs that are the responsibility of NMFS under those regulations.

(h) *Tampering.* The vessel owner and operator shall ensure that the EMTU is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(i) *Inspection.* The vessel owner and operator shall make the EMTU, including its antenna, connectors and antenna cable, available for inspection by authorized officers or by officers conducting boarding and inspection under a scheme adopted by an RFMO of which the United States is a member.

(j) *Access to data.* As required under fishery-specific regulations in other parts of this title, the vessel owner and operator shall make the vessel's position data, obtained from the EMTU or other means, available to authorized officers and to any inspector conducting a high seas boarding and inspection pursuant to a scheme adopted

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by an RFMO of which the United States is a member.

(k) *Communication devices.* In cases of EMTU failure as specified under paragraph (e) of this section, and to facilitate communication with management and enforcement authorities regarding the functioning of the EMTU and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device, in addition to the EMTU, that is capable of real-time communication with the OLE divisional office in, or nearest, the Region issuing the permit under this subpart.

§ 300.338 Observers.

(a) Where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures, NMFS may select for at-sea observer coverage any vessel that has been issued a high seas fishing permit. A vessel so selected by NMFS must carry an observer when directed to do so.

(b) NMFS will contact a vessel owner, in writing, when his or her vessel is selected for observer coverage under this section.

(c) A vessel shall not fish on the high seas without taking an observer if NMFS contacted the vessel owner under paragraph (b) of this section, or if so required as a condition of a permit issued under this subpart or pursuant to other legal authorities, unless the requirement to carry an observer has been waived under paragraph (d) of this section.

(d) The vessel owner that NMFS contacts under paragraph (b) of this section must notify NMFS of his or her next fishing trip that may take place on the high seas before commencing the fishing trip. NMFS will specify the notification procedures and information requirements, such as expected gear deployment, trip duration and fishing area, in its selection letter. Once notified of a trip by the vessel owner, NMFS will assign an observer for that trip or notify the vessel owner that coverage pursuant to this subpart is not required, given the existing requirement for observer coverage under other legal authorities.

(e) The owner, operator, and crew of a vessel on which a NMFS-approved observer is assigned must comply with safety regulations at §§ 600.725 and 600.746 of this title and—

(1) Facilitate the safe embarkation and debarkation of the observer.

(2) Provide the observer with accommodations, food, and amenities that are equivalent of those provided to vessel officers.

(3) Allow the observer access to all areas of the vessel necessary to conduct observer duties.

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

(5) Allow the observer access to EMTUs, communications equipment, and navigation equipment to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(6) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and disposition of fish for that trip.

(7) Provide accurate vessel locations by latitude and longitude upon request by the observer.

(8) Provide access to sea turtle, marine mammal, sea bird, or other specimens as requested by the observer.

(9) Notify the observer in a timely fashion when commercial fishing activity is to begin and end.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties.

(g) The permit holder, vessel operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator or Office Director imposes by written notice.

§ 300.339 Transshipment on the high seas.

(a) In addition to any other applicable restrictions on transshipment, including those under parts 300 and 635 of this title, the following requirements apply to transshipments, when authorized, taking place on the high seas:

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(1) The owner or operator of a U.S. vessel receiving or offloading fish on the high seas shall provide a notice by fax or email to the Regional Administrator or the Office Director at least 36 hours prior to any intended transshipment on the high seas with the following information: the vessels offloading and receiving the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment; date and time that transshipment is expected to occur; and species, processed state, and quantities (in metric tons) expected to be transshipped. If another requirement for prior notice applies, the more restrictive requirement (*i.e.*, a requirement for greater advance notice and/or more specific information regarding vessels, location etc.) must be followed.

(2) U.S. high seas fishing vessels shall report transshipments on the high seas to the Regional Administrator or Office Director within 15 calendar days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director. If there are applicable transshipment reporting requirements in other parts of this title, the more restrictive requirement (*e.g.*, a reporting requirement of fewer than 15 calendar days) must be followed.

(b) [Reserved]

§ 300.340 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Fish on the high seas unless the vessel has been issued, and has on board, a valid permit issued under § 300.333(d).

(c) Fish on the high seas unless the vessel has been issued, and has on board, valid permits related to the authorized fisheries noted on the high seas fishing permit, as required under § 300.334(b).

(d) Operate a high seas fishing vessel on the high seas that is not marked in accordance with § 300.336.

(e) With respect to the EMTU,

(1) Fail to install, activate, or continuously operate a properly functioning and type-approved EMTU as required in § 300.337;

(2) Power-down or power-up the EMTU without following the procedures required in § 300.337;

(3) In the event of EMTU failure or interruption, fail to repair or replace an EMTU, fail to notify the appropriate OLE divisional office and follow the instructions provided, or otherwise fail to act as required in § 300.337;

(4) Disable, destroy, damage or operate improperly an EMTU installed under § 300.337, attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.337;

(5) Fail to make an EMTU installed under § 300.337 or the position data obtained from it available for inspection, as provided in § 300.337; or

(6) Fail to carry on board and monitor communication devices as required in § 300.337(1);

(f) With respect to observers,

(1) Fail to provide to an observer, a NMFS employee, or a designated observer provider, information that has been requested pursuant to § 300.338 or § 600.746 of this title, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 300.338 or § 600.746 of this title;

(2) Fish without an observer when the vessel is required to carry an observer pursuant to § 300.338(c);

(3) Assault, oppose, harass, impede, intimidate, or interfere with an observer;

(4) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(5) Tamper with or destroy samples or equipment.

(g) Fail to submit a prior notice or a report of a transshipment as provided in § 300.339(b) of this title.

(h) Fail to comply with reporting requirements as provided in § 300.341.

§ 300.341 Reporting.

(a) *General.* The operator of any vessel permitted under this subpart must

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accurately maintain on board the vessel a complete record of fishing activities, such as catch, effort, and other data and report high seas catch and effort information to NMFS in a manner consistent with the reporting requirements of the authorized fishery(ies) noted on the high seas permit. Reports must include: identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles, marine mammals, or birds.

(1) The vessel owner and operator are responsible for obtaining and com-

pleting the reporting forms from the Regional Administrator or Office Director who issued the permit holder's high seas fishing permit. The completed forms must be submitted to the same Regional Administrator or Office Director or, if directed by NMFS, to a Science Center.

(2) Reports must be submitted within the deadline provided for in the authorized fishery or within 15 days following the end of a fishing trip, whichever is sooner. Contact information for the Regional Administrators and Science Center Directors can be found on the NMFS Web site.

(b) [Reserved]

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