

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Parts 625, 648, 650, 651, 652, 655, and 657**

[Docket No. 960612172-6172-01; I.D. 051096C]

RIN 0648-AI21

**Fisheries of the Northeastern United States**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is consolidating six CFR parts governing the marine fisheries of the Northeast region into one new CFR part. The new part contains regulations implementing the fishery management plans (FMPs) for: summer flounder; Atlantic sea scallops; Northeast multispecies; Atlantic surf clams and ocean quahogs; Atlantic mackerel, squid, and butterfish; and Atlantic salmon and implementing management measures for scup. This final rule reorganizes the FMPs' and scup management measures into a more logical and cohesive order, removes duplicative and outdated provisions, and makes technical and editorial changes to improve readability and clarity, to achieve uniformity in regulatory language, and to correct errors in the existing regulations. This final rule also amends references to Paperwork Reduction Act (PRA) information collection requirements to reflect the consolidation. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

**EFFECTIVE DATE:** July 1, 1996, except for paragraphs (a)(78), (k), and (l) of § 648.14, and subpart H of part 648 (§§ 648.124–648.125), which are effective from July 1, through September 29, 1996.

**ADDRESSES:** Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, 1 Blackburn Drive, Gloucester, MA 01930 and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Kurkul, NMFS, 508-281-9331.

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

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to those regulations implementing Northeast region FMPs and management measures for scup.

Currently, regulations implementing the FMPs for the Northeast fisheries are contained in six separate CFR parts (50 CFR parts 625, 650, 651, 652, 655, and 657). NMFS, through this rulemaking, removes those six parts and consolidates the regulations contained therein into one new part (50 CFR part 648). This consolidated regulation provides the public with a single reference source for Federal fisheries regulations specific to the Northeast region. The restructuring of six parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than six separate parts. General regulations pertaining to all fisheries and regulations pertaining to foreign fisheries have been consolidated and restructured in new 50 CFR part 600 by earlier rulemaking.

The summer flounder fishery in the Northwest Atlantic is managed jointly by NMFS and the Atlantic States Marine Fisheries Commission (Commission) under the FMP for the summer flounder fishery, which is implemented by regulations formerly at 50 CFR part 625. This FMP was prepared by the Mid-Atlantic Fishery Management Council (MAFMC) in cooperation with Commission and the New England Fishery Management Council (NEFMC) and the South Atlantic Fishery Management Council (SAFMC). NMFS manages the harvest of sea scallops under the FMP for the Atlantic sea scallop fishery, which is implemented through regulations formerly at 50 CFR part 650. The Northeast multispecies fishery is managed by NMFS under regulations implementing the FMP for the Northeast multispecies fishery formerly at 50 CFR part 651. The FMPs

for the Atlantic sea scallop fishery and the Northeast multispecies fisheries were prepared by the NEFMC, in consultation with the MAFMC (multispecies and scallops) and the SAFMC (scallops). Atlantic surf clam and ocean quahog fisheries are managed by NMFS under regulations implementing the FMP for the Atlantic surf clam and ocean quahog fisheries formerly at 50 CFR part 652. This FMP was prepared by the MAFMC in consultation with the NEFMC. Atlantic mackerel, squid, and butterfish fisheries are managed by NMFS under the FMP for the Atlantic mackerel, squid, and butterfish fisheries of the Northwest Atlantic Ocean, which is implemented by regulations formerly at 50 CFR part 655. The regulations governing fishing for Atlantic mackerel, squid, and butterfish by vessels other than vessels of the United States are contained in 50 CFR part 600. This FMP was prepared by the MAFMC. The Atlantic salmon fishery is managed by NMFS under the FMP for Atlantic salmon, which is implemented by regulations formerly at 50 CFR part 657. This FMP was prepared by the NEFMC.

All of these FMPs were prepared under the authority of the Magnuson Fishery Conservation and Management Act.

The MAFMC recently submitted to NMFS Amendment 8 to the FMP for the summer flounder fishery. That amendment would include scup in the management unit of the FMP. The MAFMC requested NMFS to impose management measures for scup on an emergency interim basis pending its requested approval and implementation of Amendment 8. The emergency measures imposed by NMFS formerly appeared at 50 CFR part 625.

In new part 648, portions of the existing regulations that contain identical or nearly identical provisions have been combined and restructured into similar measures. Paragraph headings have been added for ease in identifying measures, and regulatory language has been revised to make needed technical changes and corrections and to improve clarity and consistency.

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule recodifies many recordkeeping and reporting requirements, it also revises section 902.1(b) to reference correctly the new

sections resulting from the consolidation.

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive and technical changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. To the extent that the technical changes made by this rule are nonsubstantive, they are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d). To the extent that the technical changes made by this rule are substantive, the Assistant Administrator, under 5 U.S.C. 553(d)(3), for good cause finds that it is impracticable, unnecessary, and contrary to the public interest to delay their effective date for 30 days. The technical changes do not require any changes in the conduct of fishery participants and thus a 30-day delay in effective date is unnecessary. Further to delay their effectiveness would make it extremely difficult for the affected public to use and understand the regulations and, thus, such a delay would be impracticable and contrary to the public interest.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The following collection-of-information requirements for Northeast fisheries have been approved by OMB:

(a) *Approved under 0648-0018*—Processed Products Family of Forms—(1) Fishery products: Fish meal oil = 9.6 min/response; (2) fishery products U.S. Processors and wholesalers: 3.5 min/response; (3) small processors = 6.6 min/response; (4) large processors = 3.85 min/response; and (5) additional responses in mandatory fisheries = 6.6 min/response.

(b) *Approved under 0648-0202*—Northeast Permit Family of Forms—(1) Vessel permit (initial) = 30 min/response; (2) vessel permit (renewal) 5 min/response; (3) appeal permit denial = 30 min/response; (4) operator permit = 1 hr/response; (5) dealer permit = 5 min/response; (6) observer deployments 2 min/response; (7) experimental fishing

exemption = 1.9 hr/response; and (8) vessel identification = 45 min/response.

(c) *Approved under 0648-0212*—Vessel Logbooks—(1) Vessel log = 5 min/response; (2) shellfish log = 12.5 min/response; and (3) pound net log = 15 min/response.

(d) *Approved under 0648-0229*—Dealer Purchase Reports = 2 min/response.

(e) *Approved under 0648-0235*—Survey of Intent and Capacity—Written response = 15 min/response; phone = 5 min/response.

(f) *Approved under 0648-0238*—ITQ Allocation Transfer Request = 5 min/response.

(g) *Approved under 0648-0240*—Application to Shuck at Sea = 5 min/response.

(h) *Approved under 0648-0305*—Gear Identification Requirements = 1 min/response.

(i) *Approved under 0648-0306*—Vessel Identification Requirements = 45 min/response.

(j) *Approved under 0648-0307*—Vessel Monitoring and Communications Requirements (VTS) = 5 sec/response.

The estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Parts 625, 648, and 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Parts 650, 652, and 655

Fisheries, Reporting and recordkeeping requirements.

##### 50 CFR Part 657

Fisheries, Fishing.

Dated: June 24, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and, under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR chapter VI are amended as follows:

#### 15 CFR CHAPTER IX

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by removing in the left column under 50 CFR, the entries “625.4”, “625.5”, “625.6”, “625.7”, “625.20”, “625.27”, “650.4”, “650.5”, “650.6”, “650.7”, “650.8”, “650.24”, “650.25”, “650.26”, “650.28”, “651.4”, “651.5”, “651.6”, “651.7”, “651.8”, “651.20”, “651.21”, “651.22”, “651.25”, “651.28”, “651.29”, “652.4”, “652.5”, “652.6”, “652.7”, “652.9”, “652.20”, “652.24”, “655.4” and “655.6”, and in the right column, in corresponding positions, the control numbers; and by adding, in numerical order, the following entries to read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
50 CFR	
648.4	—0202, —0212
648.5	—0202
648.6	—0202
648.7	—0018, —0212 and —0229
648.8	—0306, —0229
648.9	—0202 and —0307
648.10	—0202
648.11	—0202
648.15	—0202
648.53	—0202
648.70	—0238
648.74	—0240
648.80	—0202
648.81	—0202
648.82	—0202
648.84	—0305
648.100	—0202
648.106	—0202

3. Part 648 is added effective July 1, 1996, except for paragraphs (a)(78), (k), and (l) of § 648.14 and subpart H (§§ 648.124—648.125), which are effective from July 1, through September 29, 1996, to read as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES****Subpart A—General Provisions**

- Sec.
- 648.1 Purpose and scope.
  - 648.2 Definitions.
  - 648.3 Relation to other laws.
  - 648.4 Vessel permits.
  - 648.5 Operator permits.
  - 648.6 Dealer/processor permits.
  - 648.7 Recordkeeping and reporting requirements.
  - 648.8 Vessel identification.
  - 648.9 VTS requirements.
  - 648.10 DAS notification requirements.
  - 648.11 At-sea sea sampler/observer coverage.
  - 648.12 Experimental fishing.
  - 648.13 Transfers at sea.
  - 648.14 Prohibitions.
  - 648.15 Facilitation of enforcement.
  - 648.16 Penalties.

**Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries**

- 648.20 Maximum OYs.
- 648.21 Procedures for determining initial annual amounts.
- 648.22 Closure of the fishery.
- 648.23 Gear restrictions.

**Subpart C—Management Measures for Atlantic Salmon**

- 648.40 Prohibition on possession.

**Subpart D—Management Measures for the Atlantic Sea Scallop Fishery**

- 648.50 Shell-height standard.
- 648.51 Gear and crew restrictions.
- 648.52 Possession restrictions.
- 648.53 DAS allocations.
- 648.54 State waters exemption.
- 648.55 Framework adjustments to management measures.

**Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries**

- 648.70 Annual individual allocations.
- 648.71 Catch quotas.
- 648.72 Minimum surf clam size.
- 648.73 Closed areas.
- 648.74 Shucking at sea.
- 648.75 Cage identification.

**Subpart F—Management Measures for the NE Multispecies Fishery**

- 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.
- 648.81 Closed areas.
- 648.82 Effort-control program for limited access vessels.
- 648.83 Minimum fish sizes.
- 648.84 Gear-marking requirements and gear restrictions.
- 648.85 Flexible Area Action System.
- 648.86 Possession restrictions.
- 648.87 Sink gillnet requirements to reduce harbor porpoise takes.

- 648.88 Open access permit restrictions.
- 648.89 Recreational and charter/party restrictions.
- 648.90 Framework specifications.

**Subpart G—Management Measures for the Summer Flounder Fishery**

- 648.100 Catch quotas and other restrictions.
- 648.101 Closures.
- 648.102 Time restrictions.
- 648.103 Minimum fish sizes.
- 648.104 Gear restrictions.
- 648.105 Possession restrictions.
- 648.106 Sea turtle conservation.

**Subpart H—Management Measures for the Scup Fishery**

- 648.124 Gear restrictions.
  - 648.125 Minimum fish sizes.
- Authority: 16 U.S.C. 1801 *et seq.*

**Subpart A—General Provisions****§ 648.1 Purpose and scope.**

(a) This part implements the fishery management plans for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); and the summer flounder fishery (Summer Flounder FMP). These FMPs and the regulations in this part govern the conservation and management of fisheries of the northeastern United States.

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

**§ 648.2 Definitions.**

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

*Alewife* means *Alosa pseudoharengus*.

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

*American shad* means *Alosa sapidissima*.

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

*Atlantic croaker* means *Micropogonias undulatus*.

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

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

*Atlantic salmon* means *Salmo salar*.

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

*Black sea bass* means *Centropristis striata*.

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

*Bluefish* means *Pomotomus saltatrix*.

*Bushel* (*bu*) means a standard unit of volumetric measurement deemed to hold 1.88 ft<sup>3</sup> (53.24 L) of surf clams or ocean quahogs in the shell.

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

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

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

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

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

*Commission* means the Atlantic States Marine Fisheries Commission.

*Conger eel* means *Conger oceanicus*.

*Cunner* means *Tautoglabrus adspersus*.

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; and the summer flounder fisheries.

*Day(s)-at-sea* (*DAS*), with respect to the NE multispecies and scallop fisheries, means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land; or fishes for, possesses, or lands regulated species or scallops.

*Dealer* means any person who receives, for a commercial purpose (other than solely for transport on land),

from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part.

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

**Dredge bottom**, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as "diamonds."

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

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

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

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

**Fishing year** means:

(1) For the scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies fishery, from May 1 through April 30 of the following year.

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

**FMP** means fishery management plan.

**Fourspot flounder** means *Paralichthys oblongus*.

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

**Hagfish** means *Myxine glutinosa*.

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

**Harbor porpoise** means *Phocoena phocoena*.

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

**Herring** means Atlantic herring, *Clupea harengus*, or blueback herring, *Alosa aestivalis*.

**Hickory shad** means *Alosa mediocris*.

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

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

**John Dory** means *Zenopsis conchifera*.

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

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

**Link**, with respect to the sea scallop fishery, means the material, usually made of a 3/8-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

**Loligo** means *Loligo pealei* (long-finned or bone squid).

**Longhorn sculpin** means *Myoxocephalus octodecimspinosus*.

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

**Menhaden** means Atlantic menhaden, *Brevoortia tyrannus*.

**Midwater trawl gear** means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

**Monkfish or anglerfish** means *Lophius americanus*.

**Mullet** means any species in the family Mugilidae.

**Multispecies Monitoring Committee** means a team of scientific and technical staff appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS' Northeast Regional Office, the

NEFSC, the USCG, an industry representative, and no more than two representatives from each affected coastal state appointed by the Commission.

**NEFSC** means the Northeast Fisheries Science Center, NMFS.

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

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

American plaice—*Hippoglossoides platessoides*.

Atlantic cod—*Gadus morhua*.

Haddock—*Melanogrammus aeglefinus*.

Ocean pout—*Macrozoarces americanus*.

Pollock—*Pollachius virens*.

Redfish—*Sebastes marinus*.

Red hake—*Urophycis chuss*.

Silver hake (whiting)—*Merluccius bilinearis*.

White hake—*Urophycis tenuis*.

Windowpane flounder—*Scophthalmus aquosus*.

Winter flounder—*Pleuronectes americanus*.

Witch flounder—*Glyptocephalus cynoglossus*.

Yellowtail flounder—*Pleuronectes ferrugineus*.

**Northern shrimp** means *Pandalus borealis*.

**Ocean quahog** means the species *Arctica islandica*.

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

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

**Out of the multispecies fishery or DAS program** means the period of time during which a vessel is absent from port and is not fishing for regulated species under the NE multispecies DAS program.

**Pair trawl or pair trawling** means to tow a single net between two vessels for the purpose of, or that is capable of, catching NE multispecies.

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

**Personal use**, with respect to the surf clam or ocean quahog fishery, means harvest of surf clams or ocean quahogs for use as bait, for human consumption,

or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

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

*Prior to leaving port*, with respect to the call-in notification system for NE multispecies, means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

*Processor* means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

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

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

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

*Regional Director* means the Director, Northeast Region, NMFS, or a designee.

*Regulated species* means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

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

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

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

*Rigged hooks* means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

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

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

*Scup* means *Stenotomus chrysops*.

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

*Sea raven* means *Hemitripterus americanus*.

*Searobin* means any species of the family Triglidae.

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

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

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

*Skate* means any species of the family Rajidae.

*Smooth dogfish* means *Mustelus canis*.

*Sorting machine* means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

*Spiny dogfish* means *Squalus acanthias*.

*Spot* means *Leiostomus xanthurus*.

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

*Squid* means *Loligo pealei* or *Illex illecebrosus*.

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

*Substantially similar harvesting capacity* means the same or less GRT and vessel length.

*Summer flounder* means *Paralichthys dentatus*.

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

*Surf clams* means Atlantic surf clams of the species *Spisula solidissima*.

*Swordfish* means *Xiphias gladius*.

*Tautog* (blackfish) means *Tautoga onitis*.

*Tied up to the dock*, with respect to NE multispecies, means to tie-up at a dock, on a mooring, or in a harbor.

*Tilefish* means *Lopholatilus chamaeleonticeps*.

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

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

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

*Upon returning to port*, for purposes of the call-in notification system for the NE multispecies fishery, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.

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

*Vessel Tracking System (VTS)* means a vessel tracking system as set forth in § 648.9 and approved by NMFS for use by scallop and NE multispecies vessels, as required by this part.

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

*Weakfish* means *Cynoscion regalis*.

*Whiting* means *Merluccius bilinearis*.

#### § 648.3 Relation to other laws.

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

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

#### § 648.4 Vessel permits.

(a) *Fishery specific vessel permit information.* (1) *NE multispecies vessels.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies in or from the EEZ. Recreational vessels and vessels fishing for NE multispecies exclusively in state waters are exempt from this requirement.

(i) *Limited access multispecies permits*—(A) *Eligibility.* To be eligible to

apply for a limited access multispecies permit, as specified in § 648.82, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies hook-gear permit under this paragraph (a)(1)(i). Vessels qualifying for 1996 limited access multispecies hook-gear permits are qualified only for that limited access permit category. A vessel is eligible for a 1996 limited access multispecies hook-gear permit, provided:

(1) The vessel was issued a 1995 open access multispecies hook-gear permit and the owner or operator of the vessel submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994, and June 1, 1995, when fishing with hook gear under the open access hook-gear permit, documenting landings of at least 500 lb (226.8 kg) of NE multispecies finfish, or its equivalent in numbers of fish; or

(2) The vessel is replacing such a vessel.

(B) *Application/renewal restrictions.* Owners of vessels must apply for a limited access multispecies hook-gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be assured that their permit application will be processed within 30 days. Vessel owners applying after December 31, 1996, will be ineligible to apply for an initial limited access multispecies hook-gear permit. To renew or apply for a limited access multispecies permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

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

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel

whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (a)(1)(i)(F) of this section:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit. For purposes of this paragraph (a)(1)(i)(E)(2), a vessel not required to be documented under title 46 U.S.C. will be considered to be 5 NT. For undocumented vessels, GRT does not apply.

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

(1) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit.

(2) The vessel's length, GRT, and NT may be increased, whether through refitting or replacement, only once. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the respective specification of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(G) *Consolidation restriction.* Limited access permits and DAS allocations may not be combined or consolidated.

(H) *Appeal of denial of permit.* (1) *Eligibility.* Any applicant eligible to apply for an initial limited access multispecies hook-gear permit who is

denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(i) The information used by the Regional Director was based on mistaken or incorrect data.

(ii) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(iii) The applicant has new or additional information.

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

(3) *Status of vessels pending appeal.* A vessel denied a limited access multispecies hook-gear permit may fish under the limited access multispecies hook-gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access hook-gear category. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(I) *Limited access permit restrictions.*

(1) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels may not change limited access multispecies permit categories during the fishing year, except as provided in

paragraph (a)(1)(i)(I)(2) of this section. A vessel issued a limited access multispecies hook-gear permit may not change its limited access permit category at any time.

(2) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(1) of this section. In 1996, a vessel owner has one opportunity to request a change in permit category by submitting an application to the Regional Director by August 14, 1996. If a complete application is not submitted by that date, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, the owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(3) With the exception of combination vessels, sea scallop dredge vessels are not eligible for limited access multispecies permits.

(J) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current CPH preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing

and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Director by the beginning of the fishing year for which it is required. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to this paragraph (a)(1)(i)(J).

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

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

(ii) *Open access permits.* Subject to the restrictions in § 648.88, a U.S. vessel that has not been issued a limited access multispecies permit is eligible for an open access multispecies handgear or charter/party permit. A U.S. vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for an open access scallop multispecies possession limit permit. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(2) *Atlantic sea scallop vessels.* Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked, or 5 bu (176.2 L) of in-shell scallops per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop permit.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44 kg) of shucked, or the equivalent

amount of in-shell scallops (50 bu (176.2 L)) per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

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

(B) *Application/renewal restrictions.* To renew or apply for a limited access scallop permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access scallop permit in any year bars the renewal of the permit in subsequent years.

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

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

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

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

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

(H) *Percentage ownership restrictions.*

(1) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

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

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

(I) *Limited access permit restrictions.* A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop



permit must elect a permit category for that vessel prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

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

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

(ii) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 lb (18.14 kg) and less than or including 400 lb (181.44 kg) of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 bu (176.2 L and 176.2 L), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.105.

(i) *Moratorium permits (applicable through 1997).* (A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

(B) *Application/renewal restriction.* No one may apply for a summer flounder moratorium permit for a vessel after:

(1) The owner retires the vessel from the fishery.

(2) The vessel fails to land any summer flounder at least once within any 52-consecutive-week period.

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel

permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.105.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must apply to the Regional Director under paragraph (c) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant must mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph (a)(3)(iii) does not meet the requirements of paragraph (a)(3)(i) of this section, but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Director at least 1 day prior to the date they wish to fish not subject to the exemption. The Regional Director may impose temporary additional procedural requirements by publishing a notification in the Federal Register.

(4) *Surf clam and ocean quahog vessels.*—Any vessel of the United States that fishes for surf clams or ocean quahogs, except vessels taking surf clams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surf clam or ocean quahog permit, respectively.

(5) *Mackerel, squid, and butterfish vessels.*—Beginning on January 1, 1997, any vessel of the United States, including party or charter vessels, that fishes for, possesses, or lands mackerel, squid, or butterfish in or from the EEZ, must have been issued and carry on board a valid *Loligo* and butterfish moratorium permit, incidental catch permit, mackerel and *Illex* permit or party/charter permit. This requirement does not apply to recreational fishing vessels. Until January 1, 1997, vessels that have been issued 1995 Federal mackerel, squid, and butterfish permits and are not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land mackerel, squid, or butterfish in or from the EEZ.

(i) *Loligo squid and butterfish moratorium permits.* (A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental

catch allowance specified in paragraph (a)(5)(i) of this section, if it meets any of the following criteria:

(1) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* squid or butterfish in any 30 consecutive day period between August 13, 1981, and August 13, 1993.

(2) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section.

(B) *Application/renewal restrictions.* No one may apply for an initial *Loligo* squid and butterfish moratorium permit for a vessel after:

(1) May 2, 1997.

(2) The owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* (1) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(5)(i)(A)(1) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

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

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

(4) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(ii) *Incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Director, based upon a recommendation by the Council, following the procedure set forth in § 648.21.

(iii) *Mackerel and Illex squid permits.* Any vessel of the United States may obtain a permit under this section to fish for or retain Atlantic mackerel or *Illex* squid in or from the EEZ.

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

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel



and vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and pertinent gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium permit must also agree, as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. A state not receiving an allocation of summer flounder shall be deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owner or operator permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, so long as fishing is conducted exclusively within state waters.

(c) *Vessel permit applications*—(1) *General*. Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or

moratorium permits under this part shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the applicable eligibility requirements specified in this section.

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

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

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

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

(iii) An application for a multispecies permit must also contain a copy of the vendor installation receipt from a NMFS certified VTS vendor as described in § 648.9, if the vessel has been issued a limited access multispecies Combination Vessel permit or individual DAS category permit, or if the applicant elects to use a VTS unit, although not required.

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

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

(B) If applying for full-time or part-time limited access scallop permit, or if opting to use a VTS unit, though not required, a copy of the vendor installation receipt from a NMFS-approved VTS vendor as described in § 648.9.

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

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

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

(e) *Issuance*. (1) Except as provided in subpart D of 15 CFR part 904, the

Regional Director shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

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

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

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

(iv) The applicant applying for a limited access multispecies combination vessel or individual DAS permit, a full-time or part-time limited access scallop permit, or electing to use a VTS, has failed to meet all of the VTS requirements specified in §§ 648.9 and 648.10; or

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

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

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

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

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

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

(j) *Reissuance.* Permits may be issued by the Regional Director when requested in writing by the owner, stating the need

for reissuance, the name of the vessel, and the fishing permit number assigned. An application for a reissued permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

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

(l) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit shall be subject to inspection upon request by any authorized official.

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

#### § 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, Atlantic mackerel, squid or butterfish harvested in or from the EEZ, or issued a permit for these species under this part, must have and carry on board a valid operator permit issued under this section. An operator permit issued pursuant to part 649 shall satisfy the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

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

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under § 648.4, unless exempted from such requirements under § 648.12. The vessel and all such fishing, catch, and gear will

remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

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

(e) *Fees.* Same as § 648.4(d).

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

(g) *Expiration.* Same as § 648.4(g).

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

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

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

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

(l) *Alteration.* Same as § 648.4(i).

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer or NMFS official.

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

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

#### § 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued and have in their possession a permit for such species issued under this section. As of January 1, 1997, all mackerel, squid, and butterfish dealers must have been issued and have in their possession a valid dealers permit for those species.

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

(c) *Information requirements.*

Applications must contain at least the following information, and any other information required by the Regional Director: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the Partnership Agreement and the names and addresses of all partners if the business is a partnership.

(d) *Fees.* Same as § 648.4(d).

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An

application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Same as § 648.4(g).

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

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

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

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

(k) *Alteration.* Same as § 648.4(i).

(l) *Display.* Same as § 648.5(m).

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

(n) *Sanctions.* Same as § 648.4(m).

#### § 648.7 Recordkeeping and reporting requirements.

(a) *Dealers—(1) Weekly report.*

Federally-permitted dealers must send by mail to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director a report of fish purchases, except that surf clam and ocean quahog dealers or processors are required only to report surf clam and ocean quahog purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided in the report:

(i) Summer flounder, scallop, NE multispecies and squid, mackerel and butterfish dealers must provide: Name and mailing address of dealer, dealer number, name and permit number of the vessels from which fish are landed or received, dates of purchases, pounds by species, price by species, and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(ii) Surf clam and ocean quahog processors and dealers must provide: Date of purchase or receipt; name, permit number and mailing address; number of bushels by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species. Dealers must also report disposition of surf clams or ocean quahogs, including name and permit number of recipients. Processors must also report size distribution and meat yield per bushel by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to submit the following information on an annual basis, on forms supplied by the Regional Director:

(i) Summer flounder, scallop, NE multispecies, and squid, mackerel and butterfish dealers must complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities described in this paragraph (a)(2)(ii) change more than 10 percent during any year, the processor shall promptly notify the Regional Director.

(b) *Vessel owners—(1) Fishing Vessel Log Reports—(i) Owners of vessels issued summer flounder moratorium, scallop, multispecies, or mackerel, squid, and butterfish permits.* The owner or operator of any vessel issued a vessel permit for summer flounder

moratorium, scallops, NE multispecies, or, as of January 1, 1997, a mackerel, squid, or butterflyfish vessel permit, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners or operators may submit reports electronically, for example by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

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

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder, unless such a vessel is also issued a summer flounder moratorium permit, a sea scallop permit, a multispecies permit, or, as of January 1, 1997, a mackerel,

squid or butterflyfish permit, in which case a fishing log report is required for each trip regardless of species retained. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USGC documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers; gear fished; quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count, by species, of all species landed or discarded; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information must be filled out before starting the next fishing trip. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surf clams or ocean quahogs. Log reports required by paragraph (b)(1)(iii) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information required in paragraph (b)(1)(iii) of this section must be filled out for each fishing trip by the end of each fishing trip.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based. At any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log. Dealers must retain

required reports and records at their principal place of business.

(f) *Submitting reports—(1) Dealer or processor reports.* Weekly dealer or processor reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. If no fish or fish product was purchased during a week, a report so stating must be submitted. Annual reports for a calendar year must be submitted to NMFS Statistics, and must be postmarked by February 10 of the following year. Contact the Regional Director for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report so stating must be submitted. Annual reports must be submitted to NMFS Statistics and must be postmarked by February 10 of the following year.

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder or mackerel, squid, and butterflyfish at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Director or designee on the same frequency basis.

#### § 648.8 Vessel identification.

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

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

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

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in

registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

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

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

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

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

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

#### § 648.9 VTS requirements.

(a) *Approval.* The Regional Director will annually approve VTSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the Federal Register and a list of approved VTSs will be published in the Federal Register upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

(b) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(1) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VTS shall be fully automatic and operational at all times, regardless of weather and environmental conditions.

(3) The VTS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VTS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS.

(8) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(9) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to

NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

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

(e) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is an operational approved system as described under paragraph (a)(1) of this section.

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

#### § 648.10 DAS notification requirements.

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

#### VTS DEMARCATION LINE

Description	N. Long.	W. Lat.
1. Northern terminus point (Canada landmass) .....	45°03'	66°47'
2. A point east of West Quoddy Head Light .....	44°48.9'	66°56.1'
3. A point east of Little River Light .....	44°39.0'	67°10.5'
4. Whistle Buoy "8BI" (SSE of Baker Island) .....	44°13.6'	68°10.8'
5. Isle au Haut Light .....	44°03.9'	68°39.1'
6. Pemaquid Point Light .....	43°50.2'	69°30.4'
7. A point west of Halfway Rock .....	43°38.0'	70°05.0'
8. A point east of Cape Neddick Light .....	43°09.9'	70°34.5'

## VTS DEMARCATION LINE—Continued

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

(b) *VTS notification.* Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), unless otherwise authorized or required by the Regional Director under § 648.9(a), must have installed on board an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified

in § 648.9(a). If a vessel has already been issued a limited access permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to install an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a), and to provide documentation of such installation to the Regional Director. The VTS unit shall be subject to the following requirements and presumption:

(1) Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), that have crossed the VTS Demarcation Line specified under paragraph (a) of this section, are deemed to be fishing

under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop or NE multispecies fishery, as applicable, for a specific time period by notifying the Regional Director through the VTS prior to the vessel leaving port.

(2) Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(4) DAS for vessels that are under the VTS notification requirements of this paragraph (b) are counted beginning

with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line upon its return to port.

(5) If the VTS is not available or not functional, and if authorized by the Regional Director, a vessel owner must provide the notifications required by paragraphs (b)(1), (2), and (3) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VTS system.

(c) *Call-in notification.* Owners of vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS, owners of scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VTS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(H)(3) are subject to the following requirements:

(1) Prior to the vessel leaving port, the vessel owner or authorized representative must notify the Regional Director that the vessel will be participating in the DAS program or the charter/party fishery by calling the Regional Director and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, and that the vessel is beginning a trip. For NE multispecies vessels, the port of departure also must be specified. A DAS or a vessel's participation in the charter/party fishery begins once the call has been received and a confirmation number is given by the Regional Director.

(2) The confirmation number given by the Regional Director must be kept on board for the duration of the trip and must be provided to an authorized officer upon request.

(3) Upon the vessel's return to port, the vessel owner or owner's representative must call the Regional Director and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel's name and permit number, and that the vessel has ended a trip. For NE multispecies vessels, the port of landing also must be specified. A DAS ends for all but vessels fishing with gillnet gear when the call has been received and confirmation given by the Regional Director. For vessels fishing with gillnet gear, DAS

continue to accrue as long as the vessel's gillnet gear remains in the water. A trip concludes and accrual of DAS ends for a gillnet vessel when the vessel returns to port with all of its gillnet gear that was in the water on board, the phone call has been received, and confirmation has been given by the Regional Director.

(4) The Regional Director will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181.44 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possesses or lands regulated species, except as provided in § 648.83, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (b) of this section.

(d) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the Federal Register, or other appropriate means.

(e) *Charter/party multispecies vessels.* Charter/party multispecies vessels that are not fishing under a multispecies DAS must declare into and out of the charter/party fishery, providing notification under paragraph (b) of this section, must remain in the charter/party fishery for a minimum of 24 hours after declaring into the fishery, and are subject to the restrictions in § 648.89.

(f) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b) must notify the Regional Director by VTS notification or through call-in notification as follows:

(1) *VTS notification.* (i) Notify the Regional Director, via their VTS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

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

(2) *Call-in notification.* (i) Notify the Regional Director by calling the Regional Director and providing the following information at least 7 days prior to fishing under the exemption: Owner and caller name and address,

vessel name and permit number, and beginning and ending dates of the exemption period.

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

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

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

#### **§ 648.11 At-sea sea sampler/observer coverage.**

(a) The Regional Director may request any vessel holding a mackerel, squid, and butterfish; scallop; NE multispecies; or summer flounder permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Director to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

(b) If requested by the Regional Director to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Director may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

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



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

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Director, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

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

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a summer flounder vessel, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel.

(3) Provide storage for biological specimens, including cold storage if available, and retain such specimens on board the vessel as instructed by the sea sampler/observer, until retrieved by authorized NMFS personnel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Director.

#### **§ 648.12 Experimental fishing.**

The Regional Director may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfly), D (sea scallops), E (surf clams and ocean quahogs), F (NE multispecies) or G (summer flounder) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Director shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, and butterfly and the summer flounder fisheries.

(a) The Regional Director may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the respective FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

#### **§ 648.13 Transfers at sea.**

(a) Only vessels issued a *Loligo* and butterfly moratorium permit under § 648.4(a)(5) and vessels issued a mackerel, squid, and butterfly incidental catch permit and authorized in writing by the Regional Director to do so, may transfer or attempt to transfer *Loligo* or butterfly from one vessel to another vessel.

(b) Vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Director to do so, may transfer species other than regulated species from one vessel to another vessel.

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

#### **§ 648.14 Prohibitions.**

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in an applicable vessel, operator, or dealer/processor permit application.

(2) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(3) Make any false statement in connection with an application, declaration, or report under this part.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(5) Alter, erase, or mutilate any permit issued under this part.

(6) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(7) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion either a NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

(9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Director.

(10) To refuse reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel.

(11) Fish for surf clams or ocean quahogs in any area closed to surf clam or ocean quahog fishing.

(12) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(13) Purchase, possess or receive for a commercial purpose or attempt to purchase possess or receive for a commercial purpose any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part and fishing exclusively in state waters.

(14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Director.

(15) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(16) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam cage tag.

(17) Possess, import, export, transfer, land, have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(18) Possess an empty cage to which a cage tag required by § 648.75 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by § 648.75 is affixed.

(19) Land or possess, after offloading, any cage holding surf clams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumption set forth in § 648.75(t)(1)(iii).

(20) Sell null and void tags.

(21) Shuck surf clams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Director under the terms of § 648.74.

(22) Receive for a commercial purpose other than transport, surf clams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ in containers other than cages from vessels capable of carrying cages.

(24) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ from vessels not capable of carrying cages other than directly into cages.

(25) Fish for surf clams or ocean quahogs in the EEZ without giving prior notification, or fail to comply with any

of the notification requirements specified in § 648.15(b).

(26) Fish for, retain, or land both surf clams and ocean quahogs in or from the EEZ on the same trip.

(27) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 648.15(b), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(28) Fail to offload any surf clams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(29) Land or possess any surf clams or ocean quahogs harvested in or from the EEZ in excess of, or without, an individual allocation.

(30) Transfer any surf clams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than transport, without a surf clam or ocean quahog processor or dealer permit.

(31) Fish for, possess, or land NE multispecies, unless:

(i) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(ii) The NE multispecies were harvested by a vessel not issued a multispecies permit that fishes for NE multispecies exclusively in state waters; or

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(32) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies from one vessel to another vessel, unless both vessels have not been issued multispecies permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Director.

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters.

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit.

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a)(3) through (6), (a)(8), (a)(9), (d), (e) and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters.

(37) Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum size specified in § 648.80(c)(2), except as provided in § 648.8(c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1), on a fishing vessel, except as provided in § 648.81(c)(2) and (d)(2).

(41) Fail to comply with the gear-marking requirements of § 648.84.

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80(a)(4), (5), (8), or (9). A violation of any of these paragraphs is a separate violation.

(44) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3).

(46) Violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(47) Fish for the species specified in § 648.80 (d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a) (2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80 (d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(48) Violate any provision of § 648.88.

(49) Violate any of the restrictions on fishing with scallop dredge gear specified in § 648.80(h).

(50) Violate any of the provisions of § 648.80(i).

(51) Obstruct or constrict a net as described in § 648.80(g) (1) or (2).

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (f)(1) through (h)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), and (h)(2).

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) and from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.51 (a)(2)(ii) and (e)(2), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limit specified in § 648.86

applicable to a vessel issued a multispecies permit.

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(57) Fish for, possess, or land per trip, scallops in excess of 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit, or a letter under § 648.4(b)(2)(viii)(F); or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(58) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(59) Have a shucking or sorting machine on board a vessel that shucks scallops at sea, while in possession of more than 400 lb (181.44 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(60) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.1 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(62) Purchase, possess, or receive for a commercial purpose, or attempt to

purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, scallops taken from a fishing vessel that were harvested in or from the EEZ, unless issued, and in possession of, a valid scallop dealer's permit.

(63) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, scallops caught by a vessel other than one issued a valid limited access or general scallop permit unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(64) Operate or act as an operator of a vessel fishing for or possessing any species of fish regulated by this part in or from the EEZ, or issued a permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(65) Possess in or harvest from the EEZ summer flounder, either in excess of the possession limit specified in § 648.105, or before or after the time period specified in § 648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(66) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.105(a).

(67) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(68) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a summer flounder moratorium permit not subject to the possession limit of § 648.105.

(69) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the Federal Register notifying permit holders that commercial quota is no longer available in that state.

(70) Fail to comply with any sea turtle conservation measure specified in § 648.106, including any sea turtle conservation measure implemented by notification in the Federal Register in accordance with § 648.106(d).

(71) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ.

(72) Transfer, directly or indirectly, or attempt to transfer to any vessel any Atlantic salmon taken in or from the EEZ.

(73) Take and retain, or land more mackerel, squid, and butterfish than specified under a notice issued under § 648.22.

(74) Possess nets or netting with mesh not meeting the minimum size requirement of § 648.23 and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* harvested in or from the EEZ.

(75) Transfer *Loligo* or butterfish within the EEZ, unless the vessels participating in the transfer have been issued valid *Loligo* and butterfish moratorium permits or valid letters of authorization from the Regional Director.

(76) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, mackerel, squid, and butterfish taken from a fishing vessel unless issued, and in possession of a valid mackerel, squid, and butterfish fishery dealer permit.

(77) Purchase or otherwise receive for a commercial purpose, mackerel, squid, and butterfish caught by other than a vessel issued a mackerel, squid, and butterfish permit, unless the vessel has not been issued a permit under this part and fishes exclusively within the waters under the jurisdiction of any state.

(78) Land any scup harvested in or from the EEZ in fillet form with the skin removed.

(79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession limits specified in § 648.86(a), or violate any of the other provisions of § 648.86.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(H)(3), to do any of the following:

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species

specified in § 648.86(c) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

(2) If required by § 648.10 to have a VTS unit:

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 648.10(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i) (E) and (F).

(5) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i) (E) and (F).

(6) Fail to comply with any requirement specified in § 648.10.

(7) Possess or land per trip more than the possession limit specified under § 648.8 if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.82(b)(4), if the vessel has been issued a limited access multispecies hook-gear permit.

(9) Fail to declare, and be, out of the NE multispecies fishery as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(10) Land, or possess on board a vessel, more than the possession limit of winter flounder specified in § 648.86(b), or violate any of the other provisions specified in § 648.86(b).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies handgear permit to do any of the following:

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 648.88(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel or handline, while in possession of, or fishing for, NE multispecies.

(3) Possess or land NE multispecies during the time period specified in § 648.86(a)(2).

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies possession limit permit for scallops to possess or land more than the possession limit of regulated species specified at § 648.88(c) or to possess or land regulated species when not fishing under a scallop DAS.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 648.89(a).

(2) Possess cod and haddock in excess of the possession limits specified in § 648.89(c).

(3) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(d).

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.55.

(3) Fail to have an approved, operational, and functioning VTS unit that meets the specifications of § 648.9

on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 648.10.

(4) If the vessel is not subject to VTS requirements specified in § 648.10(a), fail to comply with the requirements of the call-in system specified in § 648.10(b).

(5) Combine, transfer, or consolidate DAS allocations.

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(H).

(7) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i)(E) or (F).

(8) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i)(E) or (F).

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(2)(iii).

(10) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(11) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(12) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(14) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear containing rings that have

minimum sizes smaller than those specified in § 648.51(b)(3).

(15) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(16) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(17) Participate in the DAS allocation program with more than the number of persons specified in § 648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

(18) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(19) Fish under the small dredge program as specified in § 648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Director.

(20) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Director.

(21) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(22) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 648.10.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 648.54.

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(26) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops.

(2) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(3) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(4) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(5) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(7) Fish for, or land, more than 40 lb (18.14 kg) of scallops on more than one trip per calendar day.

(j) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including moratorium permit) to do any of the following:

(1) Possess 100 lb or more (45.4 kg or more) of summer flounder between May 1 and October 31, or 200 lb or more (90.7 kg or more) of summer flounder between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in § 648.104(a), or is fishing in the exempted area with an exemption permit as specified in § 648.104(b)(1), or

holds an exemption permit and is in transit from the exemption area with nets properly stowed as specified in § 648.104(f), or is fishing with exempted gear specified in § 648.104(b)(2).

(2) Possess summer flounder in other than a box specified in § 648.105(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.104(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.104(b).

(3) Land summer flounder for sale in a state after the effective date of the notification in the Federal Register notifying permit holders that commercial quota is no longer available in that state.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(6) Fish west or south, as appropriate, of the line specified in § 648.104(b)(1) if exempted from the minimum mesh requirement specified in § 648.104 by a summer flounder exemption permit.

(7) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(k) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel fishing commercially for scup that are harvested in or from the EEZ, to do any of the following:

(1) Possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ, unless the vessel meets the minimum mesh size requirement specified in § 648.124(a).

(2) Fish with or possess nets or netting in the EEZ that do not meet the minimum mesh requirement, or that are modified, obstructed, constricted, or constructed with mesh in which the bars entering or exiting the knots twist around each other, if subject to the

minimum mesh requirement specified in § 648.124(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(3) Engage in recreational fishing in the EEZ while simultaneously conducting commercial fishing operations.

(l) It is unlawful for the owner or operator of any recreational fishing vessel, including party or charter boats, to possess scup harvested in or from the EEZ smaller than the minimum size limit for recreational fishermen specified in § 648.125(b).

(m) It is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(2) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(3) Sell or transfer summer flounder to another person for a commercial purpose.

(n) It is unlawful to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

(o) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a surf clam and ocean quahog permit or issued a surf clam and ocean quahog allocation permit under § 648.70, to land or possess any surf clams or ocean quahogs in excess of, or without, an individual allocation, or to transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a surf clam and ocean quahog processor/dealer permit.

(p) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfly fishery permit, or issued an operator's permit, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* or butterflyfish, unless issued a *Loligo* squid and butterflyfish fishery moratorium permit.

(2) Take, retain, or land mackerel, squid, or butterflyfish in excess of a trip allowance specified under § 648.22.

(3) Take, retain, or land mackerel, squid, or butterflyfish after a total closure specified under § 648.22.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

(5) Transfer squid or butterflyfish at sea to another vessel, unless that other vessel has been issued a valid *Loligo* squid and butterflyfish fishery moratorium permit or a letter of authorization by the Regional Director.

(6) Fail to comply with any measures implemented pursuant to § 648.21.

(7) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterflyfish fishery permit.

(8) Fail to carry on board a letter of authorization, if fishing in an experimental fishery pursuant to § 648.12.

(q) It is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterflyfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 648.21(d).

(2) Sell or transfer mackerel, squid, or butterflyfish to another person for a commercial purpose.

(r) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.11 or to fail to keep such letter on board the vessel during the period of the experiment.

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters. Any person, regardless of the quantity of scallops possessed or landed, is subject to the prohibitions of paragraphs (a)(4) through (7), (10), (11), (68), (69), (71), (72), (73), and (87) of this section.

(t) For purposes of this section, the following presumptions apply:

(1) *Surf clams and ocean quahogs.* (i) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water

in closed areas, or the presence of any part of a vessel's gear in the water more than 12 hours after an announcement closing the entire fishery becomes effective, is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson Act and these regulations.

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ, and to be part of an individual's allocation, unless such individual demonstrates that he/she has surrendered his/her surf clam and ocean quahog vessel permit issued under § 648.4 and has conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.70(d)(2) or § 648.75(b).

(2) *Scallops*. Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(3) *Summer flounder*. All summer flounder possessed aboard a party or charter boat issued a summer flounder permit are deemed to have been harvested from the EEZ.

(4) *NE multispecies*. (i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish

were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(5) *Mackerel, squid, and butterfish*. All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

#### § 648.15 Facilitation of enforcement.

(a) *General*. See § 600.504 of this chapter.

(b) *Special notification requirements applicable to surf clam and ocean quahog vessel owners and operators*. (1) Vessel owners or operators are required to call the NMFS Office of Law Enforcement nearest to the point of offloading (contact the Regional Director for locations and phone numbers) and accurately provide the following information prior to the departure of their vessel from the dock to fish for surf clams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surf clams or ocean quahogs; expected date, time, and location of landing; and name of the individual providing notice.

(2) Owners or operators that have given notification of a fishing trip under this paragraph (b) who decide to cancel or postpone the trip prior to departure must immediately provide notice of cancellation by telephone to the Office of Law Enforcement to which the original notification was provided. A separate notification shall be provided for the next fishing trip. Owners or operators that discontinue a fishing trip in the EEZ must immediately provide notice of discontinuance by telephone to the Office of Law Enforcement to which the original notification was provided. The owner or operator providing notice of discontinuance shall advise of any changes in landing time or port of landing. The owner or operator discontinuing a fishing trip in the EEZ must return to port and offload any surf clams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(3) The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

#### § 648.16 Penalties.

See § 600.735.

### Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

#### § 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to § 648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the allowable biological catch (ABC) in U.S. waters specified pursuant to § 648.21.

(b) *Loligo*—36,000 mt (79,362,000 lb).

(c) *Illex*—30,000 mt (66,135,000 lb).

(d) Butterfish—16,000 mt (35,272,000 lb).

#### § 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications*. The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC: (1) Initial OY (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids; (2) IOY, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and (3) IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(b) *Guidelines*. As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial and recreational landings, discards, current estimates of fishing mortality, stock status, the most recent estimates of recruitment, virtual population analysis results, levels of noncompliance by harvesters or individual states, impact of size/mesh regulations, results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity, results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity, and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Squid*. (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the



potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula  $ABC = S - C - T$ , where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year; S is the mackerel spawning stock size at the beginning of the year for which quotas are specified; and T, which must be equal to or greater than 900,000 mt (1,984,050,000 lb), is the spawning stock size that must be maintained in the year following the year for which quotas are specified.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of DAH and TALFF. DAH, DAP, and JVP must be projected by reviewing data from sources specified in paragraph (a) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential by mackerel producing countries.

(B) Total world import demand by mackerel consuming countries.

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

(D) Increased/decreased revenues to the United States from foreign fees.

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

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

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

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

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

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend

establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF.

(c) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures it determines are necessary to assure that the specifications are not exceeded from the following measures:

(1) Commercial quotas.

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

(3) Commercial minimum fish sizes.

(4) Commercial trip limits.

(5) Commercial seasonal quotas.

(6) Minimum mesh sizes.

(7) Commercial gear restrictions.

(8) Recreational harvest limit.

(9) Recreational minimum fish size.

(10) Recreational possession limits.

(11) Recreational season.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee shall recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC shall review these recommendations and based on the recommendations and any public comment received thereon, the MAFMC shall recommend to the Regional Director appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Director shall review the recommendations, and on or about November 1 of each year, shall publish notification in the Federal Register proposing specifications and any measures necessary to assure that the

specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations shall be available for inspection at the office of the Regional Director during the public comment period.

(2) On or about December 15 of each year, the Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded contained in the Federal Register notification. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the Federal Register. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the MAFMC, during the fishing year by publishing notification in the Federal Register stating the reasons for such an action and providing a 30-day comment public comment period.

#### § 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel or *Loligo* or *Illex* squid or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Assistant Administrator shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of

the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the Federal Register.

(c) *Incidental catches.* During the closure of a directed fishery, the trip limit for the species for which the fishery is closed is 10 percent, by weight, of the total amount of fish on board for a vessel with a *Loligo*/butterfish moratorium permit or *Illex* or a mackerel commercial permit. During a period of closure of the directed fishery for *Loligo* or butterfish, the trip limit for a vessel with an incidental catch permit for those species is 10 percent, by weight, of the total amount of fish on board, or the allowed level of incidental catch specified in § 648.4(e)(2), whichever is less.

#### § 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 $\frac{7}{8}$  inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Director upon request):

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

Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this

section, any net, or any piece of net, with a mesh size less than 1 $\frac{7}{8}$  inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with such minimum mesh size, when the vessel is landward of the specified coordinates.

(b) *Definition of "not available for immediate use."* A net that can be shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Below deck stowage.* (i) It is stored below the main working deck from which it is deployed and retrieved; (ii) The towing wires, including the leg wires, are detached from the net; and (iii) It is fan-folded (flaked) and bound around its circumference.

(2) *On-deck stowage.* (i) It is fan-folded (flaked) and bound around its circumference;

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

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

(3) *On-reel stowage.* (i) It is on a reel and its entire surface is covered with canvas or other similar material that is securely bound;

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

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

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

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1 $\frac{7}{8}$  inches (48 mm) diamond mesh, inside stretch measure. Net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than an effective mesh opening of 1 $\frac{7}{8}$  inches (48 mm), diamond mesh, inside stretch measure. Net strengtheners (covers) may

not have an effective mesh opening of less than 4.5 inches (11.43 cm), diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (d), head ropes are not to be considered part of the top of the regulated portion of a trawl net.

#### Subpart C—Management Measures for Atlantic Salmon

##### § 648.40 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

#### Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

##### § 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (89 mm). Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge farthest away from the hinge.

(b) *Compliance and sampling.* Compliance with the minimum shell-height standard will be determined by inspection and enforcement at or after landing, including the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer as follows: An authorized officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group

fails to comply with the standard. All scallops will be subject to inspection and enforcement, in accordance with these compliance and sampling procedures, up to and including the time when a dealer receives or possesses scallops for a commercial purpose.

**§ 648.51 Gear and crew restrictions.**

**(a) Trawl vessel gear restrictions.**

Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 648.4(a)(2), while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Mesh stowage.* Same as § 648.23(b).

(iii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head

ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg) of scallops, or less, must comply with the following restrictions:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these components parts.

(2) *Minimum mesh size.* (i) The mesh size of net material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

(3) *Minimum ring size.* (i) The inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3.5 inches (89 mm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., "hangers," are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. (A copy of a diagram showing a schematic of a legal dredge ring pattern is available upon request to the Office of the Regional Director).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if rigged with only one dredge, such dredge is greater than 8 ft (2.44 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material, between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) For vessels rigged with only one dredge, and such dredge is less than 8 ft (2.44 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Director upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such a request will be placed in the appropriate category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not have more than one dredge on board or in use.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets—* (1) *Prohibition on use of trawl nets.*

Vessels issued a limited access scallop permit fishing for scallops under the DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets, unless such vessels have on board a valid letter of authorization to use trawl nets issued under paragraphs (f)(2) and (3) of this section.

(2) *Eligibility for a letter of authorization to use trawl nets.* To be

eligible for a letter of authorization to use trawl nets, a vessel may not have fished for scallops with a scallop dredge from January 1, 1988, to the present, except pursuant to a letter of authorization issued pursuant to paragraph (f)(3) of this section. Only vessels that were issued 1995 limited access scallop permits or that were eligible to be issued such a permit, and for which a determination has been made in 1995, except as provided in paragraph (f)(4) of this section, are eligible to receive a letter of authorization.

(3) *Authorization to use trawl nets.* Vessels determined to have met the criteria set forth in paragraph (f)(2) of this section for a letter of authorization shall be issued a letter of authorization by the Regional Director. Such letter must be carried on board the vessel at all times. In subsequent years, eligibility for this exemption will be indicated on the vessel's permit.

(4) *Authorization to use trawl nets by replacement vessels.* To be eligible for a letter of authorization to use trawl nets, any replacement vessel of a vessel authorized to fish for scallops with trawl nets must meet the eligibility requirements of paragraph (f)(2) of this section and have on board a valid letter of authorization issued under paragraph (f)(3) of this section. The letter of authorization must be requested at the time the vessel owner initially applies for a permit for the replacement vessel.

#### § 648.52 Possession restrictions.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2

L) of in-shell scallops, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

#### § 648.53 DAS allocations.

(a) *Assignment to DAS categories.* For each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned in the preceding fishing year. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops once their allocated number of DAS, as specified under paragraph (b) of this section, are used up.

(b) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery pursuant to the provisions of § 648.10, or has used up its allocated DAS, may leave port without being assessed a DAS, so long as it does not possess or land more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, and complies with the other requirements of this part. The annual allocations of DAS for each category of vessel for the fishing years indicated are as follows:

DAS category	1995–96 and 1996–97	1997–98	1998–99 and 1999–2000	2000+
Full-time .....	182	164	142	120
Part-time .....	82	66	57	48
Occasional .....	16	14	12	10

(c) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

(d) *End-of-year carry-over.* Limited access vessels with unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in

towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

**§ 648.54 State waters exemption.**

(a) *DAS exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.54(c) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (c) through (f) of this section.

(b) *Gear restriction exemption—(1) Limited access permits.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(c) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

(2) *General permits.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (f) of this section.

(3) *State eligibility for gear exemption.* (i) A state is eligible to have vessels fishing exclusively landward of the outer boundary of the waters of that state exempted from the gear requirements specified in § 648.51 (a), (b), and (e) (1) and (e)(2), if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(ii) The Regional Director shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(iii) Maine, New Hampshire, and Massachusetts have been determined by the Regional Director to have scallop

fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Director of any changes in their respective scallop conservation program. The Regional Director will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Director shall publish a final rule in the Federal Register amending this paragraph (b)(3)(iii) to eliminate the exemption for that state. The Regional Director may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Director shall publish a final rule in the Federal Register amending this paragraph (b)(3)(iii) to provide the exemption for such states.

(c) *Notification requirements.* Vessels fishing under the exemptions provided by paragraphs (a) and/or (b) of this section must notify the Regional Director in accordance with the provisions of § 648.10(f).

(d) *Restriction on fishing in the EEZ.* A vessel fishing under a state water's exemption may not fish in the EEZ during that time.

(e) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership.

(f) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

**§ 648.55 Framework adjustments to management measures.**

(a) Annually, upon request from the NEFMC, but at a minimum in the years 1996 and 1999, the Regional Director will provide the NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 648.53(b), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the Scallop FMP. The PDT shall report its

findings and recommendations to the NEFMC. In its report to the NEFMC, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the NEFMC shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the Scallop FMP. After considering the PDT's findings and recommendations, or at any other time, if the NEFMC determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) DAS changes.
- (2) Shell height.
- (3) Offloading window reinstatement.
- (4) Effort monitoring.
- (5) Data reporting.
- (6) Trip limits.
- (7) Gear restrictions.
- (8) Permitting restrictions.
- (9) Crew limits.
- (10) Small mesh line.
- (11) Onboard observers.
- (12) Any other management measures currently included in the FMP.

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

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

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the

affected industry in the development of the NEFMC's recommended management measures.

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

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the NEFMC's recommendation includes adjustments or additions to management measures, and if, after reviewing the NEFMC's recommendation and supporting information:

(1) The Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the Federal Register as a final rule; or

(2) The Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the action will be published as a final rule in the Federal Register; or

(3) The Regional Director does not concur, the NEFMC will be notified, in writing, of the reasons for the non-concurrence.

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

#### **Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries**

##### **§ 648.70 Annual individual allocations.**

(a) *General.* (1) For each fishing year, the Regional Director shall determine the allocation of surf clams and ocean quahogs for each vessel owner issued an allocation for the preceding fishing year, by multiplying the quotas specified for each species by the Regional Director under § 648.71 by the allocation percentage, specified for that owner on the allocation permit for the preceding fishing year, adjusted to account for any transfer pursuant to paragraph (b) of this section. These allocations shall be made in the form of an allocation permit specifying for each species the allocation percentage and the allocation in bushels. Such permits shall be issued on or before December 15, to the

registered holders who were assigned an allocation by November 1. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75.

Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number so that allocations are specified in whole cages. An allocation permit is only valid for the entity for which it is issued.

(2) The Regional Director may, after publication of a fee notification in the Federal Register, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage.* Subject to the approval of the Regional Director, part or all of an allocation percentage may be transferred, in amounts equivalent to not less than 160 bu (8,500 L) (i.e., 5 cages) in the year in which the transfer is made, to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Director and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Director at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Director. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Director. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred in quantities of not less than 5 tags at any one time, subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year and the transfer is effective upon the receipt by the transferee of written authorization from the Regional Director.

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

##### **§ 648.71 Catch quotas.**

(a) *Surf clams.* The amount of surf clams that may be caught annually by fishing vessels subject to these regulations will be specified by the Assistant Administrator, on or about December 1 of each year, within the range of 1.85 to 3.4 million bu (98.5 to 181 million L).

(1) *Establishing quotas.* (i) Prior to the beginning of each year, the MAFMC, following an opportunity for public comment, will recommend to the Assistant Administrator quotas and estimates of DAH and DAP within the ranges specified. In selecting the quota, the MAFMC shall consider current stock assessments, catch reports, and other relevant information concerning:

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

(B) Fishing mortality rates relative to the OY.

(C) Magnitude of incoming recruitment.

(D) Projected effort and corresponding catches.

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

(F) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(ii) The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surf Clam and Ocean Quahog FMP. The Assistant Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog FMP.

(2) *Report.* Prior to the beginning of each year, the Regional Director shall prepare a written report, based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

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

(ii) Fishing mortality rates relative to OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Status of areas previously closed to surf clams fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

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

(3) *Public review.* Based on the information presented in the report, and in consultation with the MAFMC, the Assistant Administrator shall propose an annual surf clam quota and an annual ocean quahog quota and shall publish them in the Federal Register. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the Federal Register on or about December 1 of each year.

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations shall be specified annually by the Assistant Administrator, on or about December 1, within the range of 4 to 6 million bu (213 to 319.4 million L), following the same procedures set forth in paragraph (a) of this section for surf clams.

#### § 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

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

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Director may suspend annually, by publication in the Federal Register, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

#### § 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the

adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant Administrator in accordance with paragraph (c) of this section. The areas closed are:

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

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

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

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

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

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

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

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

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

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

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

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

#### § 648.74 Shucking at sea.

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

(2) Any vessel owner may apply in writing to the Regional Director to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

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

(4) Any observer shall certify at the end of each trip the amount of surf



clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor.* (1) Based on the recommendation of the MAFMC, the Regional Director may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

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

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

#### § 648.75 Cage identification.

(a) *Tagging.* Before offloading, all cages that contain surf clams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage for every 60 ft<sup>3</sup> (1,700 L), or portion thereof, of the cage. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for collection or disposal as specified by the Regional Director.

(b) *Issuance.* The Regional Director will issue a supply of tags to each individual vessel owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year or he/she may specify, in the Federal Register, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's allocation. Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Director, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Director by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Director if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Director or a vendor with a written authorization from the Regional Director.

(g) *Transfer.* See § 648.70(b)(2).

(h) *Presumptions.* Surf clams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal

tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under § 648.75(b) or transferred under § 648.70(b).

#### Subpart F—Management Measures for the NE Multispecies Fishery

##### § 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, harvesting, possessing, or landing NE multispecies in or from the EEZ and all vessels holding a multispecies permit must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area.*—(1) *Area definition.* The GOM/GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Director upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

#### GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	N. Lat.	W. Long.
G1 .....	( <sup>1</sup> )	( <sup>1</sup> )
G2 .....	43°58'	67°22'
G3 .....	42°53.1'	67°44.4'
G4 .....	42°31'	67°28.1'
G5 .....	41°18.6'	66°24.8'

<sup>1</sup>The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
G6 .....	40°55.5'	66°38'	5930-Y-30750 and 9960-Y-43500.
G7 .....	40°45.5'	68°00'	9960-Y-43500 and 68°00' W. lat.
G8 .....	40°37'	68°00'	9960-Y-43450 and 68°00' W. lat.
G9 .....	40°30'	69°00'	
NL3 .....	40°22.7'	69°00'	
NL2 .....	40°18.7'	69°40'	
NL1 .....	40°50'	69°40'	
G11 .....	40°50'	70°00'	
G12 .....		<sup>1</sup> 70°00'	

<sup>1</sup> Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Gear restrictions.* (i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraphs (a) (2)(ii) and (5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish

seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to

nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large-mesh vessels.* When fishing in the GOM/GB regulated mesh area, the

minimum mesh size for any sink gillnet on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel when fishing in the GOM/GB Regulated Mesh Area while not under the NE multispecies DAS program, but when under one of the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (d), (e), (h), and (i) of this section, is set forth in the respective paragraph specifying the exemption. Vessels that are not fishing under one of these exemptions, under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the GOM/GB regulated mesh area.

(3) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(3) (i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Director upon request):

**SMALL MESH NORTHERN SHRIMP  
FISHERY EXEMPTION AREA**

Point	N. Lat.	W. Long.
SM1 .....	41°35'	70°00'
SM2 .....	41°35'	69°40'
SM3 .....	42°49.5'	69°40'
SM4 .....	43°12'	69°00'
SM5 .....	43°41'	68°00'
G2 .....	43°58'	67°22'; (the U.S.- Canada maritime Boundary).

**SMALL MESH NORTHERN SHRIMP FISH-  
ERY EXEMPTION AREA—Continued**

Point	N. Lat.	W. Long.
G1 .....	(1)	(1)

<sup>1</sup> Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* A vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraph (a)(2) of this section. The net must have a outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit out of the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Director upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission. The northern shrimp season is December 1 through May 30, or as modified by the Commission.

(4) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess

nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

**CULTIVATOR SHOAL WHITING FISHERY  
EXEMPTION AREA**

Point	N. Lat.	W. Long.
C1 .....	42°10'	68°10'
C2 .....	41°30'	68°41'
C14 .....	41°30'	68°30'
C3 .....	41°12.8'	68°30'
C4 .....	41°05'	68°20'
C5 .....	41°55'	67°40'
C1 .....	42°10'	68°10'

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Director on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(B) All nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh applied to the first 160 meshes counted from the terminus of the net.

(C) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the Federal Register.

(D) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b).

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in

area or season designation necessary, and to make appropriate recommendations to the Regional Director following the procedures specified in § 648.90 of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) Juvenile Protection Area*. Except as provided in paragraphs (a)(3), (d), (e), and (h) of this section, the minimum

mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described in § 648.23(b) by a vessel fishing in the following area is 6-inch (15.24-cm) square or diamond mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100

bars of the codend and extension piece for vessels greater than 45 ft (13.7 m) in length.

(i) The SB/JL Juvenile Protection Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

#### STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
SB1 .....	42°34.0'	70°23.5'	13737	44295
SB2 .....	42°28.8'	70°39.0'	13861	44295
SB3 .....	42°18.6'	70°22.5'	13810	44209
SB4 .....	42°05.5'	70°23.3'	13880	44135
SB5 .....	42°11.0'	70°04.0'	13737	44135
SB1 .....	42°34.0'	70°23.5'	13737	44295

#### JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
JL1 .....	43°12.7'	70°00.0'	13369	44445
JL2 .....	43°09.5'	70°08.0'	13437	44445
JL3 .....	42°57.0'	70°08.0'	13512	44384
JL4 .....	42°52.0'	70°21.0'	13631	44384
JL5 .....	42°41.5'	70°32.5'	13752	44352
JL6 .....	42°34.0'	70°26.2'	13752	44300
JL7 .....	42°55.2'	70°00.0'	13474	44362
JL1 .....	43°12.7'	70°00.0'	13369	44445

(ii) Fishing for northern shrimp in the SB/JL Juvenile Protection Area is allowed, subject to the requirements of paragraph (a)(3) of this section.

(6) *Transiting*. (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery Exemption Area and in Small Mesh Area 1/Small Mesh Area 2, as specified in paragraphs (a) (3) and (8) of this section, may transit through the SB/JL Juvenile Protection Area defined in paragraph (a)(5) of this section with nets on board that do not conform to the requirements specified in paragraph (a)(2) or (a)(5) of this section, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(3) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in

paragraph (a)(2) of this section may transit through the GOM/GB Regulated Mesh Area defined in paragraph (a)(1) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Director is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (b)(3), and (c)(3) of this section.

(7) *Addition or deletion of exemptions*. (i) An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is,

or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the Federal Register.

(ii) The NEFMC may recommend to the Regional Director, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Director to determine, without

public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraph (a)(7)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Exempted fisheries authorized under this paragraph (a)(7) are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10

percent, by weight, of all other species on board.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the Southern New England regulated mesh area described in paragraph (a)(10) of this section of 10 percent, by weight, of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size specified from July 15 through October 31 when fishing in Small Mesh Area 1, and from January 1 through June 30

when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a map depicting these areas are available from the Regional Director upon request):

#### SMALL MESH AREA 1

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM1 .....	43°03'	70°27'	13600	25910
SM2 .....	42°57'	70°22'	13600	25840
SM3 .....	42°47'	70°32'	13720	25840
SM4 .....	42°45'	70°29'	13710	25810
SM5 .....	42°43'	70°32'	(1)	25810
SM6 .....	42°44'	70°39'	13780	(1)
SM7 .....	42°49'	70°43'	13780	25910
SM8 .....	42°50'	70°41'	13760	25910
SM9 .....	42°53'	70°43'	13760	25935
SM10 .....	42°55'	70°40'	25935	(1)
SM11 .....	42°59'	70°32'	(1)	25910
SM1 .....	43°03'	70°27'	13600	25910

<sup>1</sup> 3-mile line

#### SMALL MESH AREA 2

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM13 .....	43°20.3'	69°59.4'	13320	44480
SM14 .....	43°25.9'	69°45.6'	13200	44480
SM15 .....	42°49.5'	69°40'	13387.5	44298
SM16 .....	42°41.5'	69°40'	13430	44260
SM17 .....	42°34.9'	70°00'	13587	44260
SM13 .....	43°20.3'	69°59.4'	13320	44480

(9) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Director upon request) is defined by straight lines

connecting the following points in the order stated:

#### NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1 .....	41°45'	70°00'
NS2 .....	41°45'	69°20'
NS3 .....	41°30'	69°20'
Cl1 .....	41°30'	69°23'
NS5 .....	41°26.5'	69°20'
NS6 .....	40°50'	69°20'
NS7 .....	40°50'	70°00'
NS1 .....	41°45'	70°00'

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must have on board a letter of authorization issued by the Regional Director and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area, specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the

minimum mesh size specified in paragraph (a)(2) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) The following species may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Director.

(ii) *Sea sampling.* The Regional Director may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area:

(i) bounded on the east by straight lines connecting the following points in the order stated:

#### SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	N. Lat.	W. Long.
G5 .....	41°18.6'	66°24.8'
G6 .....	40°55.5'	66°38'
G7 .....	40°45.5'	68°00'
G8 .....	40°37'	68°00'
G9 .....	40°30.5'	69°00'
NL3 .....	40°22.7'	69°00'
NL2 .....	40°18.7'	69°40'
NL1 .....	40°50'	69°40'
G11 .....	40°50'	70°00'
G12 .....	.....	1 70°00'

<sup>1</sup> Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (b)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not unavailable in use or available for

immediate use in accordance with § 648.23(b) by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine in use or available for immediate use, as described under § 648.23(b), by a vessel when not fishing under the NE multispecies DAS program and when fishing in the SNE regulated mesh area is specified under the exemptions set forth in paragraphs (b)(3), (c), (e), (h), and (i) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the SNE regulated mesh area.

(3) *Exemptions*—(i) *Species exemptions.* Vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake, and weakfish with nets with a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with the requirements specified in paragraph (b)(3)(ii) of this section.

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not

available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5' W. long. to its intersection with the 3-nm line, south along the 3-nm line to Montauk Point, southwesterly along the 3-nm line to the intersection of 72°30' W. long., and south along that line to the intersection of the outer boundary of the EEZ.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (c)(3) and (i) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl not stowed or not unavailable for immediate use as described in § 648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified at § 648.104(a). This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum

mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Additional exemptions.* The Regional Director may, using the process described in either paragraph (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, the vessel has on board a letter of authorization issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20' N. lat.; and Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat.; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL areas, the vessel has on board an authorizing letter issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring,

blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up five consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring ten consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of ten consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (g)(1), head ropes are not considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.*

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

(ii) A fishing vessel may not use a net capable of catching multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species, provided it has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in § 648.80 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Director and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Director, to participate in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8

kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(iii), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

(9) The vessel complies with all other applicable requirements.

#### § 648.81 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

##### CLOSED AREA I

Point	N. Lat.	W. Long.
CI1 .....	41°30'	69°23'
CI2 .....	40°45'	68°45'
CI3 .....	40°45'	68°30'
CI4 .....	41°30'	68°30'
CI1 .....	41°30'	69°23'

(2) Paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching NE multispecies; or

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area is available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

##### CLOSED AREA II

Point	N. Lat.	W. Long.
CI11 .....	41°00'	67°20'
CI12 .....	41°00'	66°35.8'
G5 .....	41°18.6'	66°24.8' (the U.S.-Canada Maritime Boundary)
CI13 .....	42°22'	67°20' (the U.S.-Canada Maritime Boundary)
CI11 .....	41°00'	67°20'

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as in paragraph (a)(2) (i) or (ii) of this section, or that are transiting the area, provided—

(i) The operator has determined that there is a compelling safety reason; and

(ii) The vessel's fishing gear is stowed in accordance with the requirements of paragraph (e) of this section.

##### (c) *Nantucket Lightship Closed Area.*

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

##### NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10 .....	40°50'	69°00'
CN1 .....	40°20'	69°00'
CN2 .....	40°20'	70°20'
CN3 .....	40°50'	70°20'
G10 .....	40°50'	69°00'

(2) Paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gear as in paragraph (a)(2) (i) or (ii) of this section;

(ii) Fishing with or using dredge gear designed and used to take surf clams or ocean quahogs, and that have no other gear on board capable of catching NE multispecies; or

(iii) Classified as charter, party or recreational vessel, provided that—

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Director on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.*

Vessels transiting the closed areas must stow their gear as follows:

(1) *Nets.* In accordance with one of the methods specified in § 648.23(b) and capable of being shown not to have been in recent use.

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

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

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

(f) *NE Closure Area.* (1) From August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part may be, in the area known as the NE Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

##### NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1 .....	(1)	68°55.0'
NE2 .....	43°29.6'	68°55.0'
NE3 .....	44°04.4'	67°48.7'
NE4 .....	44°06.9'	67°52.8'
NE5 .....	44°31.2'	67°02.7'
NE6 .....	(1)	67°02.7'

<sup>1</sup> Maine shoreline.

(2) Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;



(ii) That are fishing with or using exempted gear as defined under this part, excluding midwater trawl gear, provided that there is no other gear on board capable of catching NE multispecies; or

(iii) That are classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) From November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in the area known as the Mid-coast Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section (copies of a map depicting this area are available from the Regional Director upon request):

#### MID-COAST CLOSURE AREA

Point	N. Lat.	W. Long.
MC1 .....	42°30'	(1)
MC2 .....	42°30'	70°15'
MC3 .....	42°40'	70°15'
MC4 .....	42°40'	70°00'
MC5 .....	43°00'	70°00'
MC6 .....	43°00'	69°30'
MC7 .....	43°15'	69°30'
MC8 .....	43°15'	69°00'
MC9 .....	(2)	69°00'W

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Maine shoreline.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the Massachusetts Bay Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

#### MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1 .....	42°30'	(1)
MB2 .....	42°30'	70°30'
MB3 .....	42°12'	70°30'
MB4 .....	42°12'	70°00'
MB5 .....	(2)	70°00'
MB6 .....	42°00'	(2)

#### MASSACHUSETTS BAY CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
MB7 .....	42°00'	(1)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline.

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

#### § 648.82 Effort-control program for limited access vessels.

(a) *General.* A vessel issued an limited access multispecies permit may not fish for, possess, or land regulated species, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in these regulations.

(b) *DAS program—permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS category—(i) DAS allocation.* A vessel fishing under the individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* Any vessel issued a valid limited access multispecies individual DAS permit, including any vessel also issued a limited access multispecies gillnet permit, as of July 1, 1996, shall be initially assigned to the individual DAS category.

(2) *Fleet DAS category—(i) DAS allocation.* A vessel fishing under the fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* Any vessel issued a valid fleet DAS permit, including any vessel also issued a limited access multispecies gillnet

permit; limited access multispecies hook-gear permit; limited access multispecies gillnet permit that has not also been issued a DAS permit; or a limited access multispecies small vessel (less than or equal to 45 ft (13.7 m)) permit and that is larger than 20 ft (6.1 m) in length as determined by its most recent permit application, as of July 1, 1996, shall be initially assigned to the fleet DAS category.

(3) *Small vessel category—(i) DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit and fishing under the small vessel category (less than or equal to 45 ft (13.7 m)) permit as of July 1, 1996, and that is 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit, shall be initially assigned to the small vessel category. Any other vessel may elect to switch into this category, as provided for in § 648.4(a)(1)(i)(I)(2), if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a multispecies permit.

(D) Adjustments to the small vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Director following framework procedures of § 648.90.

(4) *Hook-gear category—(i) DAS allocation.* Any vessel issued a valid limited access multispecies hook-gear

permit shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year, and beyond. A vessel fishing under this category in the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the hook-gear category. Any vessel that meets the qualifications specified in § 648.4(a)(1)(ii) may apply for and obtain a permit to fish under this category.

(5) *Combination vessel category*—(i) *DAS allocation.* A vessel fishing under the combination vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit qualified to fish as a combination vessel as of July 1, 1996, shall be assigned to the combination vessel category.

(6) *Large Mesh Individual DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh individual DAS category shall be allocated a DAS increase of 12 percent in year one and of 36 percent in year two beyond the DAS allocations specified in paragraph (b)(1)(i) of this section (this includes the proration factor for 1996). To be eligible to fish under the large mesh individual DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh individual DAS category. Any vessel

that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(2).

(7) *Large Mesh Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the large mesh fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh fleet DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(2).

(c) *1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and that has been fishing under the small vessel (less than or equal to 45 ft (13.7 m)), hook-gear, or gillnet categories, is eligible to appeal its allocation of DAS, if it has not previously done so, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(2) *Exempted gillnet vessels that held an individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and that has been fishing under both the gillnet and individual DAS categories, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(d) *Individual DAS allocations*—(1) *Calculation of a vessel's individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the individual DAS program is calculated as follows:

(i) Count the total number of the vessel's NE multispecies DAS for the years 1988, 1989, and 1990. NE multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater

than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least NE multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS; or

(iv) If only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation.* (i) Initial allocations of individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than July 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data.

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* While a vessel's individual DAS allocation is under appeal, the vessel may fish under the fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* Same as § 648.53(e).

(f) *Good Samaritan credit.* Same as § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid small vessel permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access multispecies permit must declare out and be out of

the regulated NE multispecies for a 20-day period between March 1 and May 31 of each fishing year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a 20-day period between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species after May 11 of such year for the number of days needed to fulfill the 20-day requirement.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day out period of the NE multispecies fishery, using the notification requirements specified in § 648.10.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made by the Regional Director following the framework procedures of § 648.90.

#### § 648.83 Minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. All other vessels are subject to the following minimum fish sizes (TL):

##### MINIMUM FISH SIZES (TL)

Species	Size (Inches)
Cod .....	19 (48.3 cm)
Haddock .....	19 (48.3 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole) ....	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
American plaice (dab) .....	14 (35.6 cm)
Winter flounder (blackback) ..	12 (30.48 cm)
Redfish .....	9 (22.9 cm)

(2) The minimum fish size applies to the whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(b) *Exceptions.* (1) Each person aboard a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized

fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions as specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

#### § 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to gillnets and longlines, designed for, capable of, or fishing for NE multispecies must have the name of the owner or vessel, or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM/GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be

marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

#### § 648.85 Flexible Area Action System.

(a) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Director to initiate a fact finding investigation to verify the situation and publish notification in the Federal Register requesting public comments in accordance with the procedures therefor in Amendment 3 to the NE Multispecies FMP.

(b) After examining the facts, the Regional Director shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(c) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(d) Copies of the analysis and reports prepared by the Regional Director and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Director.

(e) By the deadline set in Amendment 3 the Regional Director shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the Federal Register and by notice sent to all vessel owners holding multispecies permits. The Regional Director shall also use

other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(f) Once implemented, the Regional Director shall monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the Federal Register.

(g) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

**§ 648.86 Possession restrictions.**

(a) *Haddock*—(1) *NE multispecies DAS vessels*. A vessel issued a limited access multispecies permit that is fishing under a NE multispecies DAS may land or possess on board up to 1,000 lb (453.6 kg) of haddock provided it has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *Scallop dredge vessels*. (i) No person owning or operating a scallop dredge vessel issued a multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a multispecies permit may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, scallop dredge vessel or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock provided the vessel has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Winter flounder*. A vessel issued a limited access multispecies permit that is fishing in the MA regulated mesh area and is not fishing under a NE multispecies DAS, may land, or possess on board, winter flounder up to 10 percent, by weight, of all other species on board, or 200 lb (90.7 kg), whichever

is less. Winter flounder on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection in standard totes.

(c) *Other possession restrictions*. Vessels are subject to any other applicable possession limit restrictions of this part.

**§ 648.87 Sink gillnet requirements to reduce harbor porpoise takes.**

(a) *Areas closed to sink gillnets*. Section 648.81(f) through (h) sets forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals.

(b) *Additional areas closed to sink gillnets*. All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

(1) *Mid-coast Closure Area*. From March 25 through April 25 of each fishing year, the restrictions and requirements specified in paragraph (a)(2) of this section apply to the Mid-coast Closure area, as defined under § 648.81(g)(1).

(2) *Cape Cod South Area Closure*. From March 1 through March 10 of each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to the area known as the Cape Cod South Closure Area (copies of a map depicting this area are available from the Regional Director upon request), which is the area bounded by straight lines connecting the following points in the order stated.

**CAPE COD SOUTH CLOSURE AREA**

Point	N. Lat.	W. Long.
CCS1 .....	(1)	71°45' W
CCS2 .....	40°40' N	71°45' W
CCS3 .....	40°40' N	70°30' W
CCS4 .....	(2)	70°30' W

<sup>1</sup> RI shoreline.

<sup>2</sup> MA shoreline.

(c) *Framework adjustment*. (1) At least annually, the Regional Director will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the NEFMC's HPRT shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the NEFMC's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the NE Multispecies FMP. The HPRT shall report its findings and recommendations to the NEFMC.

(2) After receiving and reviewing the HPRT's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the NE Multispecies FMP. If the NEFMC determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings.

(3) The NEFMC may request, at any time, that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(5) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

(6) The Regional Director may accept, reject, or with NEFMC approval, modify the NEFMC's recommendation, including the NEFMC's recommendation to issue a final rule, as specified under § 648.90(b)(3).

**§ 648.88 Open access permit restrictions.**

(a) *Handgear permit.* A vessel issued a valid open access multispecies handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that it does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access

multispecies charter/party permit is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

**§ 648.89 Recreational and charter/party restrictions.**

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 648.23(b) and 648.81(e) (2), (3), and (4).

(b) *Recreational minimum fish sizes—*(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (TL) as follows:

**MINIMUM FISH SIZES (TL)**

Species	Inches	
	1996	1997+
Cod .....	20 (50.8 cm)	21 (53.3 cm)
Haddock .....	20 (50.8 cm)	21 (53.3 cm)
Pollock .....	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole) .....	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab) .....	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback) .....	12 (30.5 cm)	12 (30.5 cm)
Redfish .....	9 (22.9 cm)	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ.

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise

transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

**§ 648.90 Framework specifications.**

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC consideration on any changes, adjustment or additions to DAS allocations, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC shall review available data pertaining to: Catch and landings, DAS and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the

options it develops are expected to meet the NE Multispecies FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; and any other management measures currently included in the NE Multispecies FMP.

(3) The NEFMC shall review the recommended target TACs and all of the options developed by the MSMC and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is

consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the NEFMC, as specified in paragraph (a)(5) of this section, provided that the option meets the NE Multispecies FMP objective and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

(5) If the NEFMC submits, on or before January 7, a recommendation to the Regional Director after one NEFMC meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the NEFMC's recommendation in the Federal Register as a proposed rule. The Federal Register notification of the proposed action will provide a 30-day public comment period. The NEFMC may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the NEFMC's recommendation meets the NE Multispecies FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the Federal Register. If the Regional Director concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the NEFMC's recommendation, a final rule shall be published in the Federal Register on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the NEFMC fails to submit a recommendation to the Regional Director by February 1 that meets the

FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the Federal Register.

(b) *Within season management action.* The NEFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP.

(1) *Adjustment process.* After a management action has been initiated, the NEFMC shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

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

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

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

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

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

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

(i) If the Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the Federal Register.

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

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

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

## **Subpart G—Management Measures for the Summer Flounder Fisheries**

### **§ 648.100 Catch quotas and other restrictions.**

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of 0.23: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates

of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraphs (a) (8) and (10) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Director measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Director shall review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the Federal Register by October 15 to

implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the Federal Register by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Director will publish a final rule in the Federal Register to implement the measures necessary to assure that the applicable specified F will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

#### ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine .....	0.04756
New Hampshire .....	0.00046
Massachusetts .....	6.82046
Rhode Island .....	15.68298
Connecticut .....	2.25708
New York .....	7.64699
New Jersey .....	16.72499
Delaware .....	0.01779
Maryland .....	2.03910
Virginia .....	21.31676
North Carolina .....	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the

amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Director shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Director shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

#### § 648.101 Closures.

(a) *EEZ closure.* The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the Federal Register if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without



causing the applicable specified F to be exceeded.

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

#### **§ 648.102 Time restrictions.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

#### **§ 648.103 Minimum fish sizes.**

(a) The minimum size for summer flounder is 13 inches (33 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels that do not qualify for a moratorium permit, or party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.100.

#### **§ 648.104 Gear restrictions.**

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh or 6-inch (15.2-cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from

the terminus of the codend to the head rope, excluding any turtle excluded device extension.

(2) Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* The minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit and fishing from November 1 through April 30 in the "exemption area," which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ. Vessels fishing with a summer flounder exemption permit shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.100(e), so that it is not "available for immediate use" outside the exempted area. The Regional Director may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Director makes such a determination, he/she shall publish notification in the Federal Register terminating the exemption for the remainder of the exemption season.

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

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

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

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

(3) The Regional Director may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per

trip. If the Regional Director makes such a determination, he/she shall publish a notice in the Federal Register terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 648.104(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.100(a).

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

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

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

of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not "available for immediate use."

**§ 648.105 Possession restrictions.**

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

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

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

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in<sup>3</sup> (2.5 ft<sup>3</sup> or 70.79 cm<sup>3</sup>).

**§ 648.106 Sea turtle conservation.**

This section will be suspended during the effectiveness of any temporary regulations issued to regulate incidental take of sea turtles in the summer flounder under authority of the ESA

under parts 217, 222, and 227 of this title. Such suspensions and temporary regulations will be issued by publication in the Federal Register and will be effective for a specified period of time, not to exceed 1 year.

(a) *Sea turtle handling and resuscitation.* The sea turtle handling and resuscitation requirements specified in § 227.72(e)(1) (i) and (ii) of this title apply with respect to sea turtles incidentally taken by a vessel fishing for summer flounder.

(b) *Sea turtle monitoring and assessment program.* (1) The Regional Director will establish a monitoring and assessment program, in cooperation with the MAFMC and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observer-based monitoring program in accordance with § 648.11 may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; onboard observers; individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns, and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) *Required use of Turtle Excluder Devices (TED).* The Regional Director will require the use of a NMFS-approved TED by any vessels engaged in summer flounder fishing operations and utilizing trawl gear on or after October 15 as necessary to protect sea turtles. The Regional Director will publish notification in the Federal Register with the specific time period. Descriptions of NMFS-approved TEDs can be found in § 227.72(e)(4) of this title. This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05' N. lat., bounded on the south by a line along 33°35' N. lat., and bounded on the east by a line 7 nm from the shoreward boundary of the EEZ.

(d) *Closure of the fishery.* The Regional Director may close the summer flounder fishery in the EEZ, or any part

thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the Federal Register. The Regional Director shall take such action if he/she determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notification and for the period specified in the notification. The Regional Director will provide as much advance notice as possible, consistent with the requirements of the ESA, and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions, restrictions, and duration of the closure will be specified in the notification.

(e) *Reopening of the fishery.* (1) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the Federal Register. The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS' sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Director may impose additional sea turtle conservation measures, including tow-time requirements, in the EEZ, after consultation with the MAFMC, the

Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the Federal Register. The Regional Director shall take such action if he/she determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in the EEZ. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in § 648.10, the Regional Director may require that all or a certain portion of the vessels engaged in fishing for summer flounder carry observers, consistent with the requirements of § 648.10, to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research

purposes. Research must be approved by the Regional Director, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he/she determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in the Federal Register.

#### **Subpart H—Management Measures for the Scup Fishery**

##### **§ 648.124 Gear restrictions.**

(a) *General.* Otter trawl vessels that land or possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ must fish with nets that have a minimum mesh size of 4 inches (10.2 cm) applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

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

(c) *Net modification and mesh obstruction and constriction.* Same as § 648.104 (c) and (d) except substitute

the word “scup” for the words “summer flounder.”

(d) *Stowage of nets.* Otter trawl vessels retaining 4,000 pounds or more (1,814.4 or more kg) of scup harvested in or from the EEZ, and subject to the minimum mesh requirement specified in paragraph (a) of this section may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to the specifications specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not “available for immediate use.”

##### **§ 648.125 Minimum fish sizes.**

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels engaged in commercial fishing.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that are engaged in recreational fishing.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets.

#### **PARTS 625, 650, 651, 652, 655, AND 657—[REMOVED]**

4. Parts 625, 650, 651, 652, 655, and 657 are removed.

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