

period on the proposed amendments to the NESHAP General Provisions (72 FR 69, January 3, 2007). We agreed to these requests and are extending the comment period to May 4, 2007. Public comments must be received on or before that date.

We expect to add to the docket by the end of March some additional information and analyses relevant to the proposal. Commenters will then have approximately 30 days to review the additional information and provide any comments by May 4, 2007. Anyone interested in reviewing the additional information should check the docket beginning in April.

#### How Can I Get Copies of the Proposed Amendments and Other Related Information?

EPA has established the official public docket for the proposed rulemaking under docket ID No. EPA-HQ-OAR-2004-0094. Information on how to access the docket is presented above in the **ADDRESSES** section. In addition, information may be obtained from the Web page for the proposed rulemaking at: <http://www.epa.gov/ttn/atw/gp/gppg.html>.

Dated: February 28, 2007.

**Elizabeth Craig,**

*Acting Assistant Administrator for Air and Radiation.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070215035-7035-01; I.D. 020907E]

RIN 0648-AT62

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Framework Adjustment 1

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Framework Adjustment 1 (FW 1) to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). FW 1 management measures were developed by the Mid-

Atlantic Fishery Management Council (Council) and propose to implement a vessel monitoring system (VMS) requirement for vessels participating in the surfclam and ocean quahog fisheries. The VMS requirement would replace the current telephone-based notification requirement necessary prior to departure on a surfclam or ocean quahog fishing trip. The intent of this action is to propose management measures that would improve the management and enforcement of regulations governing the Atlantic surfclam and ocean quahog fishery in the U.S. Exclusive Economic Zone.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on April 4, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Mail:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark on the outside of the envelope, "Comments on Framework 1 VMS Proposed Rule."
- *Fax:* (978) 281-9135.
- *E-mail:* 0648AT62@noaa.gov.

Include in the subject line of the email the following document identifier: "Comments on Framework 1."

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.

Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. A copy of the RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Hooker, Fishery Policy Analyst, 978-281-9220.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Council voted on December 13, 2006, to recommend to NMFS that a VMS requirement for Atlantic surfclam and ocean quahog fishing vessels, including Maine mahogany quahog vessels, be implemented for their respective fisheries. This action was

originally approved by the Council as part of Amendment 13 to the FMP in 2003. However, the Council recommended that the Regional Administrator implement a VMS requirement for the fisheries when an economically viable system became available to the industry. Three vendors have been approved by NMFS for use in the Northeast Region. The costs of the VMS units have decreased since 2003 so that purchase and installation costs now range from approximately \$3,150 to \$4,200, and recurring monthly costs range from \$25 to \$100. As a result of the lower costs, the Council voted in June 2005 to begin the development of a framework adjustment to require the mandatory use of VMS for surfclams and ocean quahogs. The Council held two public meetings, on October 11, 2006, and December 13, 2006, to discuss the management measures contained in FW1 and, on December 13, 2006, the Council selected and approved the VMS management measures to submit to NMFS for approval and implementation.

#### Proposed Measures

A VMS requirement is being proposed for the surfclam and ocean quahog fishery in order to: (1) eliminate the requirement to notify NMFS Office of Law Enforcement via telephone prior to beginning a fishing trip; (2) facilitate the monitoring of areas closed to fishing due to environmental degradation (e.g., harmful algal blooms and former dump sites); and (3) facilitate the monitoring of borders between state and Federal regulatory jurisdictions. The VMS requirement would include a fishing trip declaration prior to starting a fishing trip and automatic hourly polling of the vessel position. Proof of an installed and operational VMS unit would be a condition for the issuance of the applicable vessel permits, with some exceptions granted to the limited access Maine mahogany quahog permit. There are three commercial fishing vessel permit categories for these fisheries: An open access Atlantic surfclam permit (SF 1); an open access ocean quahog permit (OQ 6); and a limited access Maine mahogany quahog permit (OQ 7). FW 1 management measures would implement a requirement for vessels participating in the fisheries to use a VMS to facilitate better monitoring and reporting in the Atlantic surfclam and ocean quahog fisheries. The VMS requirement would replace the current management measure that requires vessels fishing outside the Maine mahogany quahog fishery to call their local NOAA law enforcement office prior to departure on an Atlantic

surfclam or ocean quahog fishing trip to provide vessel and trip information. Furthermore, the VMS requirement would facilitate the monitoring of state and Federal fishing areas, and areas closed to environmental degradation or harmful algal blooms. The VMS unit would be required of all vessels issued an Atlantic surfclam (SF 1) or ocean quahog (OQ 6) open access permit. For vessels issued a Maine mahogany quahog limited access permit (OQ 7), the VMS requirement would be delayed by 1 year from the effective date of the final rule to allow greater time for the participants in the smaller, artisanal fishery in Maine, to comply with the new requirement.

Vessels required to use VMS under this action would declare their intended fishing activity via the VMS unit prior to crossing the vessel demarcation line, as specified at § 648.10, before beginning a fishing trip. Under this action, vessels would have their position automatically polled once per hour. Vessels would be able to power-down their VMS unit if one of the following conditions is met: (1) The vessel will be continuously out of the water for more than 72 hr, and the vessel signs out of the VMS program by obtaining a valid letter of exemption from the Administrator, Northeast Region, NMFS (Regional Administrator); or (2) the vessel declares out of the fishery and the VMS program for a minimum period of 30 consecutive days and the vessel signs out of the VMS program by obtaining a valid letter of exemption from the Regional Administrator, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter.

In addition to the management measures contained in FW 1, this proposed rule would clarify that federally permitted Atlantic surfclam and ocean quahog dealers and processors must retain used ITQ cage tags for 60 days beyond the end of the calendar year. Previously, cage tags were required to be retained for an unspecified period of time, which created confusion when seafood dealers wished to dispose of used cage tags.

#### *Atlantic Surfclam (SF 1) and Ocean Quahog (OQ6) VMS Measures*

Effective upon implementation of this action, this VMS requirement would affect all vessel owners that apply for and are subsequently issued the SF 1 and/or OQ 6 open access permit. More than 1,500 vessels were issued these permits in 2006, however only approximately 40 vessels actually

participated in this fishery in Federal waters. It is believed that many individuals apply for this permit because it is available to most vessels and there is no additional cost to vessel owners to obtain open access permits for fisheries in which they do not currently participate. Upon the effective date of the proposed measure, if the VMS requirement is not met, the SF 1 and/or OQ 6 permit will be cancelled until such time that the vessel comes into compliance with the management measures and reapplies for the permit.

#### *Maine Ocean Quahog (OQ 7) VMS Measures*

All vessels with a limited access OQ 7 permit would be granted an additional year from the effective date of a final rule implementing FW 1 to come into compliance with the VMS requirement. This additional year is proposed for the Maine mahogany quahog fishery because it operates in an area where shore-based electrical power may not currently be available. Vessel owners in this fishery often moor their vessels away from shore due to lack of shoreside facilities and, when shoreside docking facilities are available, electrical power may not be included. Thus, it is anticipated that this sector will have the additional burden of procuring an auxiliary power system (e.g., an extra battery, photovoltaic cells) in order to comply with the VMS requirement to maintain power to the VMS unit 24 hr per day. Since the revocation of an OQ 7 limited access permit could result in the permit becoming ineligible for renewal, special provision would be made for the implementation of the VMS requirement for the OQ 7 permit category (in addition to being effective 1 year from the effective date of the final rule implementing FW 1), in that the limited access permit would not be cancelled for failure to install a VMS unit as long as the vessel is not participating in the Maine mahogany quahog fishery. Once a vessel comes into compliance with the VMS requirement, the vessel owner must maintain an operational VMS unit onboard the vessel until such time that the permit is relinquished or the vessel meets a condition to power-down the VMS unit and receives authorization from the Regional Administrator.

#### **Classification**

At this time, NMFS has not determined that FW 1, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account

the data, views, and comments received during the comment period.

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

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule, is found in the preamble to this document. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule. This action proposes to implement a mandatory VMS requirement in the Atlantic surfclam and ocean quahog fisheries. This action was compared to five different alternatives, including a no action (status quo) alternative. The other, non-preferred alternatives included: (1) A mandatory VMS requirement for all surfclam and ocean quahog vessels without a deferral of the requirement for Maine mahogany quahog vessels for the first year (Alternative 2a); (2) a mandatory VMS requirement for all surfclam and ocean quahog vessels that includes a VMS power-down provision for all vessels moored or docked in the Maine mahogany quahog zone (Alternative 3a); (3) a mandatory VMS requirement for all surfclam and ocean quahog vessels with an exemption to the VMS requirement to all vessels fishing exclusively in the Maine mahogany quahog zone (Alternative 3b); and (4) a mandatory VMS requirement for all surfclam and ocean quahog vessels with an exemption to all vessels participating in the limited access Maine mahogany quahog fishery (Alternative 3c).

#### *Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply*

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding \$3.5 million. In 2005, a total of 80 vessels were reported harvesting surfclams and/or ocean quahogs from the federally managed surfclam and ocean quahog fisheries. Thirty-two of the vessels were operating in the limited access Maine mahogany quahog fishery, and 48 vessels were participating in the open access surfclam and ocean quahog ITQ program. In 2005, average gross income for each species category was: (1) \$728,780 per vessel for ocean quahog harvesters; (2) \$846,186 per vessel for surfclam harvesters; and (3) \$120,591 per vessel for the Maine mahogany quahog limited access fishery. Each

vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 80 commercial fishing entities fall within the SBA size standard for small commercial fishing entities.

#### *Economic Impacts of This Proposed Action*

As of November 2006, a total of 62 vessels had reported participating in the 2006 Federal surfclam and ocean quahog fisheries. Of those vessels, 29 were not registered with NMFS as having an operational VMS unit on the vessel. The 33 vessels that have VMS likely have it installed as a result of a requirement for another fishery in which the vessel participates. Initial, one-time, purchase and installation costs for a VMS unit from one of the three vendors ranges from \$1,800 - \$3,800. Annual service costs are estimated to be between \$360 and \$960, depending on vendor and service plan. Thus, assuming current fishery participation levels, total costs in the first year of implementation of this proposed rule would be approximately \$50,000 (includes purchase, installation, and annual service costs for 14 vessels) in total for all of the affected vessel owners. In the second year of implementation, when the limited access Maine mahogany quahog vessels would need to comply with the VMS requirement, the total cost would be approximately \$77,000. This figure includes the purchase of a VMS unit and auxiliary battery (see below), installation, and annual service costs for 19 vessels. As discussed in the preamble, it is assumed that the vessels participating in the Maine mahogany quahog fishery do not have access to shore-based electrical power. In order to stay in compliance with keeping the VMS turned on 24 hr each day, including while moored or docked, it is estimated that the vessels will need to purchase an auxiliary battery to maintain power to the VMS unit. The one-time cost of an auxiliary battery is estimated to be \$500 per vessel. Thus, the six vessels that already have VMS installed on their vessels would incur an additional cost of an auxiliary battery (the current VMS requirement for these vessels allows for the vessels to power-down the VMS unit when it is moored or docked). In addition, the annual service costs for the 14 vessels from the first year of implementation would also recur, at approximately \$5,040. This brings the total cost across the whole fishery for the second year of implementation to \$85,000.

Approximately 62 vessels are currently active in these fisheries.

However, many of these vessels already have VMS as a requirement of another fishery, such as the Atlantic sea scallop, Northeast multispecies, monkfish, and/or Atlantic herring fisheries. As a result of their current VMS status, these vessels were excluded from the analysis of the VMS purchase, installation, and service costs in years one and two of implementation. However, if the vessels that are already in compliance with the VMS requirement were to cancel their participation in those fisheries for which the VMS unit is also required, the total annual cost to the industry in year three and beyond (service costs only) would be approximately \$23,000 (62 vessels x \$360 in annual fees).

The indirect economic impact of the proposed rule to entities, other than those directly impacted, is a slight increase in exvessel prices. The market for clam meats is relatively soft and quite competitive coast-wide, so it is unlikely that producers would be able to pass along much of the increased costs to processors and consumers.

#### *Economic Impacts of Alternatives to the Proposed Action*

The Council analyzed five ocean quahog quota alternatives in addition to the preferred alternative, which are summarized in the introduction to this section. The range of alternatives are from a status-quo (no action) alternative to an alternative requiring compliance with the VMS requirement to begin for all vessels once a final rule implementing FW 1 is effective. The current, status quo, call-in notification is estimated to take 2 minutes (OMB Control Number 0648-0202). However, the call-in notification has been suspended for the limited access Maine mahogany quahog fishery since the establishment of this sector in 1998. In comparison to this status quo, each of the four non-preferred alternatives would result in slight increases in exvessel values, as all the alternatives contained a VMS requirement for all or part of the fishery. Alternative 2a is very similar to the preferred alternative except that it would not allow vessels participating in the Maine mahogany quahog limited access fishery to defer the VMS requirement for 1 year. Thus, the cost for this requirement would be similar to that of the preferred alternative except that the start-up costs (\$116,450) would be borne by the whole industry in the first year of implementation. After the first year of implementation, the increase in vessel costs beyond status quo would be \$11,880. Alternative 3a would also require all vessels to purchase and install a VMS unit. However, this

alternative would allow vessels participating exclusively in the Maine mahogany quahog fishery to turn off their VMS units when moored or tied to the dock. Thus purchase and installation of an auxiliary power supply would not be necessary. This would result an initial additional cost of approximately \$103,950 in the first year of the VMS requirement falling, to \$11,880 each year afterward. The economic impacts of alternatives 3b and 3c would be the same in relation to the status quo. Both of these alternatives would exempt vessels operating in either the Maine mahogany quahog zone (Alternative 3b, area-based exemption) or the limited access Maine mahogany quahog fishery (Alternative 3c, permit-based exemption) from the VMS requirement in its entirety. The ITQ vessels that fish exclusively in the Maine mahogany quahog zone already have VMS installed on their vessels as a result of a requirement for another fishery. Thus the 14 actively participating ITQ vessels that do not have VMS installed would be the only vessels bearing the costs of these alternatives. These two alternatives have the smallest economic impact, an increase of \$44,100 in the first year for initial VMS purchase and installation costs, and \$5,500 in service and maintenance costs each year thereafter, in comparison to the other alternatives.

#### **Reporting and Recordkeeping Requirements**

This proposed rule contains collection of information requirements subject to review and approval by the OMB under the Paperwork Reduction Act (PRA). This action would eliminate the collection currently approved under OMB Control Number 0648-0202. A new control number would be assigned to this new collection until such time that 0648-0202 may be modified. Annualized over a 3-yr period, the direct financial cost to the fishing industry for the purchase, installation, and service of equipment in order to comply with the VMS trip declaration requirement would be \$73,491. For this proposed action the actual reporting burden (e.g., vessel trip declaration) would not change significantly from that currently approved under 0648-0202 because, although the reporting time for each vessel would be reduced, the total number of vessels required to report would increase, due to the inclusion of the Maine mahogany quahog fishery. The vessel owner or operator of a vessel participating in the ITQ program would no longer have to telephone a local port office prior to departure on a surfclam or ocean

quahog trip and verbally give the following information: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port, whether the trip will be directed on surfclams or ocean quahogs, expected date, time, and location of landing; and name of individual providing notice. The reporting burden for this requirement was estimated at 2 min per response (OMB Control Number 0648-0202) when the reporting requirement was implemented in 1993 (58 FR 14342, March 17, 1993).

Under this proposed rule, the vessel owner or operator would only be required to select the appropriate fishery displayed on the VMS monitor located in the wheelhouse of the vessel. All identifying information is transmitted with the selection and authorities would be able to monitor for themselves when the vessel departs and returns from the fishing trip. On the surfclam and ocean quahog trip declaration screen, there would be three options to choose from: (1) Atlantic surfclam ITQ trip; (2) ocean quahog ITQ trip; and (3) Maine mahogany quahog trip. It is estimated that choosing the appropriate trip declaration would take 1 min per response. In 2005, there were approximately 5,580 fishing trips taken by the entire industry. This would make the time burden for the VMS trip declaration 92 hr per year. When the time to respond to the providing proof of VMS installation, and time for requesting an exemption to turn off the VMS unit are considered, the annual reporting burden is 100 hr. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall 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.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 27, 2007.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

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

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

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

2. In § 648.2, a definition for “Individual Transferable Quota (ITQ) Program” and “Mahogany Quahog” are added in alphabetical order and the definition for “Vessel Monitoring System” is revised to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Individual Transferable Quota (ITQ) Program* means, for the Atlantic surfclam and ocean quahog fishery, the annual individual allocation of quota specified at § 648.70.

\* \* \* \* \*

*Mahogany Quahog* see *Ocean Quahog*.

\* \* \* \* \*

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

\* \* \* \* \*

3. In § 648.4, paragraph (a)(4)(ii) is revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(4) \* \* \*

(ii) *VMS Requirement.* (A) *Surfclam and ocean quahog open access permits.* In order to be eligible for issuance of an open access surfclam or ocean quahog permit the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set forth in § 648.9. The vessel owner/operator must provide to the NMFS Northeast Region Permit Office a copy of the VMS vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

(B) *Maine mahogany quahog limited access permit.* In order to be eligible for issuance of a Maine mahogany quahog permit, the vessel owner must have installed on the vessel an operational VMS unit that meets the criteria set

forth in § 648.9. By [DATE 1 YEAR FROM EFFECTIVE DATE OF FINAL RULE], unless otherwise exempted under section § 648(a)(4)(ii)(B)(1) of this section. The vessel owner/operator must provide to NMFS a copy of the VMS vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

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

(2) [Reserved]

\* \* \* \* \*

4. In § 648.9, paragraphs (c)(2)(i)(B) and (e) are revised to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) For vessels fishing with a valid NE multispecies limited access permit, or a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

\* \* \* \* \*

(e) *New and replacement VMS installations.* The vessel owner/operator required to use a VMS must provide to the NMFS Northeast Region Permit Office a copy of the VMS vendor's installation receipt or provide verification of vendor activation prior to departure on a fishing trip requiring VMS. A VMS certification of installation form is available from the NMFS Regional Administrator. Should a VMS

unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying that the new VMS unit is an operational, approved system as described under paragraph (a) of this section. Vessel owners required to use a VMS in the Atlantic surfclam and ocean quahog fishery, as specified at § 648.15(b), must confirm the VMS operation and communications service to NMFS by calling 978-281-9213 to ensure that position reports are automatically sent to and received by NMFS Office of Law Enforcement (OLE). For the Atlantic surfclam and ocean quahog fishery, NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

\* \* \* \* \*

5. In § 648.10, paragraphs (b)(1)(vii) and (b)(1)(viii) are added, and (b)(2) is revised to read as follows:

**§ 648.10 DAS and VMS notification requirements.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

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

(viii) Effective [DATE 1 YEAR FROM EFFECTIVE DATE OF FINAL RULE] a vessel issued a Maine mahogany quahog (OQ 7) limited access permit, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(1);

\* \* \* \* \*

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section, must provide

documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS and Atlantic surfclam and ocean quahog permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

\* \* \* \* \*

6. In § 648.14, paragraph (a)(25) is revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(25) Fail to comply with any of the notification requirements specified in § 648.15(b) including:

(i) Fish for, land, take, possess, or transfer surfclams or ocean quahogs under an open access surfclam or ocean quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b);

(ii) Beginning [DATE ONE YEAR FROM EFFECTIVE DATE OF FINAL RULE] fish for, land, take, possess, or transfer ocean quahogs under a limited access Maine mahogany quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b).

\* \* \* \* \*

7. In § 648.15, paragraph (b) is revised to read as follows:

**§ 648.15 Facilitation of enforcement.**

\* \* \* \* \*

(b) Special notification requirements applicable to surfclam and ocean quahog vessel owners and operators. (1) Surfclam and ocean quahog open access permitted vessels. Vessel owners or operators issued an open access surfclam or ocean quahog open access permit for fishing in the ITQ Program, as specified at § 648.70, are required to declare their intended fishing activity via VMS prior to crossing the VMS demarcation line specified at § 648.10(a).

(2) *Maine mahogany quahog limited access permitted vessels.* Beginning [DATE 1 YEAR FROM EFFECTIVE DATE OF FINAL RULE], vessel owners or operators issued a limited access Maine mahogany quahog permit for fishing for Maine mahogany quahogs in the Maine mahogany quahog zone, as specified at § 648.76, are required to

declare via VMS, prior to departure on a fishing trip, into the Maine mahogany quahog zone their intended fishing activity, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(1).

(3) *Declaration out of surfclam and ocean quahog fisheries.* Owners or operators that are transiting between ports or fishing in a fishery other than surfclams and ocean quahogs must either declare out of fisheries or declare the appropriate fishery, if required, via the VMS unit, before beginning the trip. The owner or operator discontinuing a fishing trip in the EEZ or Maine mahogany quahog zone must return to port and offload any surfclams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

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

(5) *Authorization for use of fishing trip notification via telephone.* The Regional Administrator may authorize or require, the notification of a surfclam or ocean quahog fishing trip information via a telephone call to the NMFS Office of Law Enforcement nearest to the point of offloading instead of the use of VMS. If authorized, the vessel owner or operator must accurately provide the following information prior to departure of their vessel from the dock to fish for surfclams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surfclams or ocean quahogs; expected date, time, and location of landing; and name of individual providing notice. If use of a telephone call-in notification is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

\* \* \* \* \*

8. In § 648.75, paragraph (a) is revised to read as follows:

**§ 648.75 Cage identification.**

\* \* \* \* \*

(a) *Tagging.* Before offloading, all cages that contain surfclams 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 60 days beyond the end of the

calendar year, unless otherwise directed  
by authorized law enforcement agents.

\* \* \* \* \*

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