

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/24/2007

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Barry West
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 05/23/2007

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200705-0648-005
AGENCY ICR TRACKING NUMBER:
TITLE: Atlantic Sea Scallops Amendment 10 Data Collection
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0491

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2010

DISCONTINUE DATE:

| BURDEN: | RESPONSES | HOURS | COSTS |
|--|-----------|-------|-----------|
| Previous | 329,427 | 5,611 | 716,000 |
| New | 236,219 | 7,949 | 1,445,823 |
| Difference | | | |
| Change due to New Statute | 0 | 0 | 0 |
| Change due to Agency Discretion | -20 | -1 | 705,627 |
| Change due to Agency Adjustment | -93,188 | 2,339 | 24,196 |
| Change Due to Potential Violation of the PRA | 0 | 0 | 0 |

TERMS OF CLEARANCE:

OMB Authorizing Official:

John F. Morrall III
Acting Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

| IC Title | Form No. | Form Name | CFR Citation |
|---|----------|--|---------------|
| Atlantic Sea Scallops Amendment 10 Data Collection | | | 50 CFR 648.10 |
| VMS: trip declaration, trip termination, compensation trip ID, powerdown provision and polling fees | | | 50 CFR 648 |
| Broken trip adjustment and access area trip exchange | NA, NA | Atlantic Sea Scallop Broken Trip Adjustment Sheet, Atlantic Sea Scallop Area Access Trip Exchange Request Form | 50 CFR 648 |
| VMS purchase and installation verification | | | 50 CFR 648 |

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

| | |
|---|--|
| <p>1. Agency/Subagency originating request</p> | <p>2. OMB control number b. <input type="checkbox"/> None a. _____ - _____</p> |
| <p>3. Type of information collection (<i>check one</i>)</p> <p>a. <input type="checkbox"/> New Collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p> <p>For b-f, note Item A2 of Supporting Statement instructions</p> | <p>4. Type of review requested (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Regular submission</p> <p>b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____</p> <p>c. <input type="checkbox"/> Delegated</p> |
| | <p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| | <p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____</p> |
| <p>7. Title</p> | |
| <p>8. Agency form number(s) (<i>if applicable</i>)</p> | |
| <p>9. Keywords</p> | |
| <p>10. Abstract</p> | |
| <p>11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>)</p> <p>a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms</p> <p>b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government</p> <p>c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government</p> | <p>12. Obligation to respond (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p> |
| <p>13. Annual recordkeeping and reporting burden</p> <p>a. Number of respondents _____</p> <p>b. Total annual responses _____</p> <p> 1. Percentage of these responses collected electronically _____%</p> <p>c. Total annual hours requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p> | <p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>)</p> <p>a. Total annualized capital/startup costs _____</p> <p>b. Total annual costs (O&M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p> 1. Program change _____</p> <p> 2. Adjustment _____</p> |
| <p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management</p> <p>b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research</p> <p>c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance</p> <p>d. <input type="checkbox"/> Audit</p> | <p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>)</p> <p>a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure</p> <p>c. <input type="checkbox"/> Reporting</p> <p> 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly</p> <p> 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually</p> <p> 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p> |
| <p>17. Statistical methods</p> <p>Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No</p> | <p>18. Agency Contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: _____</p> <p>Phone: _____</p> |

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
ATLANTIC SEA SCALLOPS AMENDMENT 10 DATA COLLECTION
OMB CONTROL NO.: 0648-0491**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

NMFS Northeast Region manages the Atlantic sea scallop (scallop) fishery of the Exclusive Economic Zone (EEZ) off the east coast under the Atlantic Sea Scallop Fishery Management Plan (FMP) developed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended in 2006. The regulations implementing the FMP are at **50 CFR Part 648**. To successfully implement and administer components of the FMP, 0648-0491 includes the following information collections:

1. Vessel monitoring system (VMS) requirements for occasional scallop vessels that wish to participate in the access area program;
2. VMS requirements for general category 1B scallop vessels. Category 1B vessels are authorized to land up to 40 lb of scallops;
3. Access area broken trip notification requirements;
4. Access area trip exchange application procedures;
5. Increased VMS polling frequency to one-half hour from one hour.

1. Vessel monitoring system (VMS) requirements for occasional scallop vessels that wish to participate in the access area program: VMS serves as an important enforcement tool. While VMS use is required of full-time and part-time scallop vessels harvesting scallops in access areas, this program extended the requirement to occasional scallop vessels. In addition to installing VMS, vessel operators must submit a VMS declaration via VMS prior to embarking on a scallop trip. Enforcement officials utilize VMS data to enforce management measures and monitor their activity and landing levels.

2. VMS requirements for General Category 1B scallop vessels: Scallop vessels that possess or land more than 40 lb. of scallop meats (or five US bushels of in-shell scallops) for commercial sale in any trip must have an operational VMS unit. VMS is required to be fully automatic and operational at all times, unless exempted under the power-down provision. In addition to installing a VMS and sending a confirmation signal, vessel operators must submit a VMS declaration via VMS prior to embarking on a scallop trip. VMS requirements are necessary for NMFS to enhance monitoring and enforcement of the 400 lb. scallop possession limit for the general category 1B fishery.

3. Access area broken trip notification requirements: If a trip is terminated before a vessel retains their possession limit (a so-called broken trip), a vessel owner may request from the Regional Administrator authorization to take an additional trip (a compensation trip) to retain the remainder of the possession limit. To do so, vessels are required to submit the VMS trip termination form prior to leaving the access area, submit a broken trip adjustment sheet upon returning to port, and submit a compensation trip ID VMS form upon departing on the compensation trip. The VMS trip termination form requires

the vessel operator to provide estimated scallop meat weight on board, estimated landing time and the reason the vessel “broke” the trip. The broken trip adjustment sheet requires the vessel owner’s name, vessel name, permit #, United States Coast Guard (USCG) documentation #, vessel operator name, date and time of incident, date of VMS notification, pounds of scallops landed, access area fished, nature of the incident, trip departure date, landing date, and signature. The compensation trip ID is entered into the compensation trip ID VMS form prior to departing on the compensation trip. The costs of these forms are estimated to be minimal, and be outweighed by the benefits of the broken trip program.

4. Access area trip exchange application requirements: The one-for-one access area trip exchange program provides flexibility to scallop vessels about where they may fish. The participants need to send an access area trip exchange application to NMFS with the following information: Vessel name and permit number, owner name and signature, specification of the areas involved in the exchange. Both vessels involved in the exchange are required to submit forms for cross verification. This measure is expected to provide flexibility to vessels regarding which areas to fish, thereby reducing the possibility of revenue loss to those vessels that are unable to access some distant areas due to vessel capacity constraints. Although there will be some transaction costs associated with the exchange of access area trips, the net result will likely be a reduction in overall costs of fishing. Administrative and enforcement costs associated with the exchange of controlled access trip authorizations are modest when compared with the potential improvement in controlled access allocation programs and reduced economic cost to industry.

5. Increased VMS polling frequency to one-half hour from one hour: The increased polling frequency applied to all vessels with a VMS unit, regardless of whether the vessel is a participant of the area access program. The increased polling frequency enhances the monitoring capability to catch violators fishing in the closed areas. Since the average polling increased from 30 minutes from 1 hour, there is a 50% chance of detecting entries into the closed areas of more than 15 minutes. This requirement applies to the 344 limited access vessels (which includes occasional scallop vessels) as well as to the 980 Category 1B scallop vessels.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Several offices of NMFS, the U.S. Coast Guard and the Fishery Management Councils will utilize the information. Data collected through these programs will be incorporated into the NMFS database. Aggregated summaries of the collected information will be used to evaluate the management program and future management proposals.

As explained in Question #1, the information gathered has utility. National Oceanic and Atmospheric Administration (NOAA), NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this

Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

These collections primarily utilize VMS technology to minimize reporting burdens. Many VMS form items are collected automatically, minimizing data entry by the vessel operator. Vessel owners may also download broken trip adjustment sheets and access area trip exchange applications from the Regional Office website. Vessel owners may fax broken trip adjustment forms and access area trip exchange applications.

4. Describe efforts to identify duplication.

The broken trip reporting requirements require vessel owners to submit some duplicate information twice. Vessels are required to submit a VMS trip termination form to NMFS prior to leaving an access area. Such notification includes estimated meat weight on board, estimated landing time and the reason the vessel “broke” the trip. Once back at port, vessel owners or operators are required to submit a broken trip adjustment sheet within 30 days of landing. Duplicative information on the broken trip adjustment sheet includes the reason the trip was broken. The initial notification allows the Office of Law Enforcement (OLE) to ensure these notices are consistent with actual conditions at sea and on the vessel. The broken trip adjustment sheet provides information, such as landed scallop weight, that allows for the issuance of broken trip compensation authorization letters.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

All of the respondents are considered small businesses. Only the minimum data needed to monitor compliance with regulations are requested from respondents. VMS transmissions automate much of the required information. Broken trip and trip exchange forms are available to be downloaded off the internet. Vessel owners may fax broken trip adjustment forms and access area trip exchange applications.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

These collections are critical to the effective and timely implementation and oversight of the FMP.

To monitor compliance with access area trip allocations for occasional vessels and the general category fleet, VMS transmissions are required. This data is collected at a rate deemed necessary to ensure scallop fleet activities comply with FMP requirements. The increased polling frequency enhances monitoring capability to catch violators fishing in closed areas.

The broken trip and trip exchange programs promote industry cost effectiveness and flexibility. Without the broken trip and trip exchange program collections, these programs could not be administered. Without proper administration and oversight, these programs could not function, and industry would lose these beneficial programs.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Respondents are required to submit information more often than quarterly in the following scenarios:

- a) An occasional vessel allocated and taking more than one trip in access area in one quarter will need to submit a trip declaration code for each trip. This reporting requirement is necessary to monitor and enforce access area trip allocations;
- b) A general category 1B vessel taking more than one scallop trip in a quarter will need to submit a trip declaration code for each trip. This reporting requirement is necessary to monitor and enforce general category scallop fishing regulations; which include access area trip allocations, area closures, and landing restrictions;
- c) A vessel breaking a trip is required to submit a VMS trip termination form, complete the broken trip adjustment sheet within 30 days of returning to port, and submit the compensation trip ID via VMS prior to departing on the compensation trip. The VMS form is necessary to enforce broken trip regulations and the adjustment sheet is necessary to obtain sufficient information that allows for the issuance of a compensation trip letter of authorization.
- d) All scallop vessels required to have VMS must have their VMS polled at least once every half hour. VMS' are polled automatically. Since the average polling increased from 30 minutes from 1 hour the monitoring capability to catch violators fishing in the closed areas has been enhanced.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Office of Management and Budget (OMB) Control No.: 0648-0491 now encompasses requirements of four other collections (OMB Control No.: 0648-0416, OMB Control No.: 0648-0509, OMB Control No.: 0648-0529, and OMB Control No.: 0648-0541).

Trip exchange procedures and two of the three broken trip procedures were implemented through Amendment 10 (initially OMB Control No.: 0648-0491) to the FMP, which was developed over the course of three years and received extensive public discussion in Council, committee and industry advisory meetings. Specifically, the Council held 60 policy-meeting days, 47 scientific and technical meeting-days during the development of Amendment 10. The Council also held 11 public hearing meetings, 4 Scoping meetings during 2000-2002, and 7 public hearing meetings on Draft Supplemental Environmental Impact Statement (DSEIS) in May 2003, at which there

were public discussion of the monitoring requirements (see Table 146 in Section 8.1.1 of Amendment 10 for further information). Interested parties were provided the opportunity to submit written comments at the public hearings and during the 90-day comment period following the submission of the Draft Amendment document in April 2003. The Council selected the final alternatives in August and September 2003 based on public comment and scientific advice. Frameworks 14 and 15 (initially OMB Control No.: 0648-0416) included provisions that occasional scallop vessels have VMS prior to participating in the access area program. Other collections included increasing the polling frequency to one half hour from one hour for all scallop vessels and two pre-trip Observer Program notification requirements. This action was approved through the Council process, which incorporated public comment during the development of the frameworks. In addition, the agency provided for public comment on these measures through the Federal rule making process. On March 2, 2003, a notice was published in the Federal Register to solicit comment from the public on the proposed and/or continuing information collections concerning this action. The comment period ended on September 2, 2003. No comments were received.

Framework 16 (initially OMB Control No.: 0648-0509) included provisions that general category vessels must have a VMS to participate in the Access Area Program. With the implementation of Framework 17, and the creation of the 1B permit category, general category vessels that fish in open areas or access areas must have VMS. Therefore, this collection was effectively absorbed by OMB Control No.: 0648-0529, and does not add to the overall collection burden.

The new general category 1B permit that requires VMS was created through Framework 17 (initially OMB Control No.: 0648-0529) to the FMP. The specific requirements of Framework 17 were developed during the period October 2004 through February 2005 and were discussed at four public scallop meetings. Interested parties were provided the opportunity to submit written comments at these meetings, which are included in Section 8 of Framework 17.

The compensation ID VMS form was implemented through Framework 18 (initially OMB Control No.: 0648-0541), with opportunity for public input during four Scallop Oversight Committee meetings and three Council meetings between June, 2005 and November, 2005. A final rule, Regulation Identifier Number (RIN) 0648-AT25 Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 18, was published in the Federal Register in June 2006.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift will be made to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data will be kept confidential as required by Section 402(b) of the Magnuson-Stevens Act, as amended in 2007, will be maintained in accordance with NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and will not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e. vessel name, owner, etc.)

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

OMB Control No.: 0648-0491 has been updated in this renewal to reflect more recent information. In addition, three additional scallop Paperwork Reduction Act (PRA) collections have recently been merged into this collection (OMB Control No.: 0648-0416, OMB Control No.: 0648-0529, and OMB Control No.: 0648-0541), thereby increasing the overall burden. Table 1 summarizes the time burden of these reporting requirements. For the purposes of this analysis, the labor cost has been set at \$15/hour.

The average number of broken trips per year in 2005 and 2006 was 272. Average response time to complete and submit the VMS trip termination form is estimated to be two minutes, for a total burden of 9.1 hours ($272 \times 2 \text{ minutes} = 544/60 = 9.1 \text{ hours}$). Average time to complete the broken trip adjustment sheet is estimated to be 10 minutes, for a total burden of 45.3 hours ($272 \times 10 \text{ minutes} = 2720/60 = 45.3 \text{ hours}$). Average response time to complete the VMS compensation trip ID form is estimated to be two minutes, for a total burden of 9.1 hours ($272 \times 2 \text{ minutes} = 544/60 = 9.1 \text{ hours}$). For all of the entities to complete all of these requirements, the estimated total time burden is 63.5 hours ($9.1 + 9.1 + 45.3$).

The average number of trip exchanges in 2006 was 90 exchanges (very few, if any, additional trip exchange applications are expected in 2007). Since each exchange involves two vessels, the number of entities affected is estimated to be 180. Average response time to complete the trip exchange application has been estimated to be 15 minutes, for a total burden of 45 hours ($15 / 60 \times 180 = 45.0 \text{ hours}$).

Newly permitted vessels are required to verify their VMS is operational before a permit will be issued once. It is estimated that it takes 2 minutes to verify the VMS unit is functioning properly, two minutes to send a declaration code and two minutes to send a power down code. Since there will be no new occasional scallop vessels, there will be no VMS verification time burden for this category of vessels. It is estimated that there will be approximately 20 new general category 1B scallop vessels each year, so there will be 20 VMS verifications, for a time burden of 40 minutes ($2 \times 20 = 40 \text{ minutes}$).

Vessels must submit a trip declaration code each time they sail, and general category vessels may send a power down code at the conclusion of each trip. Occasional vessels will take two trips in a fishing year (one access area, one day-at-sea trip), for a total VMS trip declaration time burden of four minutes ($2 \times 2 = \text{four minutes}$). It is estimated that the 980 general category vessels take 120 trips on average per year, for a total of 117,600 trips. Therefore, the total trip declaration and power down time burden for the general category 1B fleet is estimated to be 7,840 hours ($(2 \text{ minutes} \times 117,600 \text{ declaration codes}) + (2 \text{ minutes} \times 117,600 \text{ power down codes}) = 470,400 / 60 = 7,840 \text{ hours}$).

Total annual time burden hours are 7,949 and labor costs to respondents are \$119,238.50 (see Table 1).

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Recordkeeping and reporting costs to respondents resulting from the broken trip program collections include transmitting the VMS trip termination form, submitting the broken trip adjustment sheet, transmitting the compensation trip ID form, and printing and stationary costs. It is estimated that each VMS form costs \$0.79 to transmit, therefore total transmission costs for both the VMS trip termination form and compensation trip ID form are \$429.76 ($2 \times 272 \times 0.79 = \429.76). Each broken trip adjustment sheet costs \$0.41 to mail, therefore total mailing costs are \$111.52 ($0.41 \times 272 = \111.52). An additional \$10 has been included to cover printing and stationary costs. Thus, the total costs for broken trip collections are \$551.28.

Additional costs to respondents resulting from the trip exchange program include application mailing costs, and printing and stationary costs. Each application costs \$0.41 to mail, therefore total mailing costs are \$73.80 ($180 \times 0.41 = \73.80). An additional \$10 has been included to cover printing and stationary costs. Therefore, total costs are \$83.80.

Additional costs to respondents resulting from the VMS requirements for occasional and general category scallop vessels include VMS purchase, installation and annual operational costs, trip declaration requirements and power down provisions. Since the cost of VMS is reimbursed to general category 1B permit holders and there will be no new occasional permit holders, there is no cost associated with VMS purchase. The average VMS installation cost is \$340. It is estimated there will be 20 new general category 1B permit holders each year, therefore total installation costs will be approximately \$6,800 ($20 \times \$340 = \$6,800$).

Annual dues paid by VMS users are determined by polling frequency. The annual average cost of operating a VMS at a polling rate of once every half hour is \$953.70. The total annual cost to both limited access and general category 1B vessels is \$1,262,698.80 ($(344 + 980) \times \$953.70 = \$1,262,698.80$).

It is estimated that each trip declaration costs \$0.79 to transmit, therefore total transmission costs for occasional scallop vessels will be \$1.58 ($2 \times \$0.79 = \1.58). Total transmission costs of trip declaration codes and power down codes for general category 1B scallop vessels will be \$185,808.00 ($2 \times 117,600 = 235,200 \times 0.79 = \$185,808.00$).

Total annual costs excluding time burden to respondents are \$1,455,945.14 (see Table 2).

14. Provide estimates of annualized cost to the Federal government.

Costs incurred by the government as a result of these collections, as summarized in Table 3, includes processing compensation trip requests, and processing access area trip exchange applications. Wage costs have been calculated based on \$25/hour. It takes approximately 1 minute to process each VMS trip termination form and compensation trip ID form, and 30

minutes to process each broken trip adjustment sheet, for a time burden cost of \$3,626.67 $((1 / 60 \times 272) + (1 / 60 \times 272) + (30 / 60 \times 272) \times \$25 = \$3,626.67)$. In addition, mailing cost notifying the applicant of the determination of the compensation trip request is \$111.52 $(\$0.41 \times 272 = \$111.52)$. It takes approximately 15 minutes to process each trip exchange application, for a time burden cost of \$562.50 $(15 / 60 \times 90 = \$562.50)$. In addition, mailing cost notifying the applicant of the determination of the trip exchange application is \$36.90 $(\$0.41 \times 90 = \$36.90)$. Total costs to the government are \$4,337.59.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

OMB Control No.: 0648-0491 burden and costs have increased by net amounts of approximately 7591 hours and \$1,454,000 since the initial PRA request. This collection has been modified significantly since it was created in 2004. Framework Adjustments 14, 15, 16, 17 and 18 of the FMP were recently merged with this collection, Amendment 10. Adjustments have also been made to the burden and cost estimates of the original reporting requirements, as well as to the merged requirements; e.g. since Framework 17 was approved, the number of affected vessels has grown from 223 to 980. Adjustments based on this increase in respondents account for the difference in burden and cost from those on record at OMB as of the last of the mergers.

Adjustments (decreases) to the burden and cost burden for the original reporting requirements under OMB Collection No.: 0648-0491 are **323 hours** and **\$9,248.25**. The Observer Program notification requirements are now accounted for under OMB Collection No.: 0648-0546, the Cooperative Industry Survey no longer exists, and there are fewer broken trips than initially anticipated. Additional adjustments – **a decrease of 65 hours and an increase of \$163,714** – are due to miscellaneous changes in responses and costs.

Framework Adjustments 14 and 15 required Occasional scallop vessels that participate in the Area Access Program to install a vessel monitoring system (VMS) unit: 20 vessels x \$340). In addition, this collection increased the VMS polling frequency from one half hour to 1 hour. This doubled the polling cost and thus increased the 0491 collection budget by **\$164,037** (no associated burden hours).

Framework Adjustment 16 required the installation of VMS units on general category scallop vessels participating in the access area program. These vessels are required to declare an access area trip prior to departure. The costs of this collection were absorbed by additional general category scallop regulations contained in Amendment 17. Therefore, this merger did not increase the overall collection.

Framework Adjustment 17 extended the VMS reporting requirements to include the general category vessels that possess or land more than 40 lb. of scallop meats. The VMS is required to be fully automatic and operational at all time, unless exempted under the power-down exemption. These vessels may also declare a power down code upon returning to port. These vessels are required to declare a trip prior to departure. This merger, and the addition of 757 vessels to which the requirements now apply, have increased the 0491 collection hourly burden by a total of **7,840 hours** (powerdown provision and trip declaration burden hours for 980 vessels are \$3,920 hours each) and costs by **\$1,126,034** (installation costs for 20 vessels are \$6,800; polling (operation) costs are \$934,626; trip declaration and powerdown provision costs

are \$92,904 each). The portions of burden and cost attributed to the additional 757 vessels would be approximately 2,661 hours and \$749,248.

Framework Adjustment 18 required vessels taking broken trip compensation trips to enter a unique trip identification code into their VMS units prior to departure. The burden of this requirement is an additional **9 hours** and **\$215.00**.

The collection, after completion of the mergers described above, showed an estimated total of 5,611 hours and \$716,000. In preparing this renewal request, additional burden and cost associated with the increase in vessels more recently affected by Framework 17 were added, and the decrease in burden and cost for the original requirements under OMB Control No.: 0648-0491 was calculated. Therefore, only the changes since the last approved request (merger of OMB Control No.: 0648-0416 into this collection) are shown on the 83-I and are counted as adjustments: **a net increase in burden of 2,338 hours and \$740,000** (2,661 – 323 hours and \$749,248 - \$9,248).

16. For collections whose results will be published, outline the plans for tabulation and publication.

Results from this collection may be used in scientific, management, technical or general informational publications such as Fisheries of the United States, which follows prescribed statistical tabulations and summary table formats. Data are available to the general public on request in summary form only. Data are available to NMFS employees in detailed form on a need-to-know basis only.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

We request that forms not be required to display the OMB Control Number and Expiration Date due to VMS technical issues. Vessel Monitoring System (VMS) forms are in electronic media format only. There is limited space in this format to provide a PRA statement. Additionally, one of the approved VMS vendors (Boatrac, Inc) has a limit of 50 lines of text per macro or VMS form, and is also limited to a total of 600 lines of text for all macros. As VMS requirements become more complex with changing Northeast regulations, the macros are approaching these limits. Including the PRA text will negatively impact NMFS' ability to expand the macros within the current limits to comply with regulatory changes.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods are employed in the information collection procedures; the requirements are mandatory for participants in the Atlantic sea scallop fishery.

TABLE 1: Estimated Respondent Time Burden and Labor Costs

| Requirement | Annual responses | Time per Response | Total Burden | Wages and Salaries |
|--|------------------|-------------------|-----------------------|----------------------|
| VMS trip termination form | 272 | 2 minutes | 9.1 hours | \$ 136.50 |
| Broken trip adjustment sheet | 272 | 10 minutes | 45.3 hours | \$ 679.50 |
| Compensation trip ID VMS form | 272 | 2 minutes | 9.1 hours | \$ 136.50 |
| Access area trip exchange application | 180 | 15 minutes | 45.0 hours | \$ 675.00 |
| Occasional scallop permit VMS trip declaration | 2 | 2 minutes | 4 minutes | \$ 1.00 |
| General category 1B scallop permit VMS installation verification | 20 | 2 minutes | 40 minutes | \$ 10.00 |
| General category 1B scallop permit powerdown provision | 117,600 | 2 minutes | 3,920 hours | \$ 58,800.00 |
| General category 1B scallop permit VMS trip declaration | 117,600 | 2 minutes | 3,920 hours | \$ 58,800.00 |
| TOTAL | 236,218 | | 7,949.20 hours | \$ 119,238.50 |

TABLE 2: Estimated Respondent Recordkeeping/Reporting Costs

| Requirement | Annual Responses | Cost per Response | Total Cost |
|---|------------------|-------------------|------------------------|
| VMS trip termination form | 272 | \$0.79 | \$ 214.88 |
| Broken trip adjustment sheet | 272 | \$0.45 | \$ 122.40 |
| Compensation trip ID VMS form | 272 | \$0.79 | \$ 214.88 |
| Access area trip exchange application | 180 | \$0.47 | \$ 84.60 |
| Limited access VMS polling fees | 344 | \$953.70 | \$ 328,072.80 |
| Occasional scallop permit VMS trip declaration | 2 | \$0.79 | \$ 1.58 |
| General category 1B scallop permit VMS installation | 20 | \$340 | \$ 6,800.00 |
| General category 1B polling fees | 980 | \$953.70 | \$ 934,626.00 |
| General category 1B scallop permit powerdown provision | 117,600 | \$0.79 | \$ 92,904.00 |
| General category 1B scallop permit VMS trip declaration | 117,600 | \$0.79 | \$ 92,904.00 |
| TOTAL | | | \$ 1,455,945.14 |

TABLE 3: Estimated Government Costs

| Requirement | Annual responses | Time per Response | Burden Hours | Wages and Salaries | Miscellaneous Cost | Total Cost |
|-------------------------------|------------------|-------------------|--------------|--------------------|--------------------|-------------|
| VMS trip termination form | 272 | 1 minute | 4.53 | \$ 113.33 | \$ - | \$ 113.33 |
| Broken trip adjustment sheet | 272 | 30 minutes | 136.00 | \$ 3,400.00 | \$ 106.08 | \$ 3,506.08 |
| Compensation trip ID VMS form | 272 | 1 minute | 4.53 | \$ 113.33 | \$ - | \$ 113.33 |



ONE-FOR-ONE SEA SCALLOP ACCESS AREA TRIP EXCHANGE REQUEST FORM

SUBMIT TO:
SFD - SEA SCALLOP TRIP EXCHANGES
NATIONAL MARINE FISHERIES SERVICE
ONE BLACKBURN DRIVE, GLOUCESTER, MA 01930
FAX: (978) 281-9135

Trip Exchange: This form must be used to request a Sea Scallop Access Area trip exchange between two vessels. Trips may be exchanged on a one-for-one basis and may only occur between vessels within the same permit category (Full-time, Part-time, or Occasional). One form must be used for each exchange. This form may be duplicated for additional exchange requests. Vessel operators may not initiate the Access Area trip requested below until vessel owners receive written notice that the request has been approved. Written approval or disapproval of the request will be provided within 15 days of receipt of this form.

Vessel A: Owner Name _____ Permit # _____
Vessel Name _____ Official # _____

The owner of Vessel A wishes to give one trip to Vessel B in the following access area (Circle One):

CAII NLCA ETAA* HCAA

Vessel B: Owner Name _____ Permit # _____
Vessel Name _____ Official # _____

In exchange, the owner of Vessel B wishes to give one trip to Vessel A in the following access area (Circle One):

CAII NLCA ETAA* HCAA

Owner of Vessel A: _____ Date: _____
(Signature)

Owner of Vessel B: _____ Date: _____
(Signature)

*ETAA: Vessels may exchange 2006 fishing year (FY) CAII and/or NLCA trips for 2007 FY ETAA trips. 2007 ETAA trips may be reduced if 2006 surveys identify a lower exploitable scallop biomass. If ETAA trips are reduced, vessels that exchanged 2006 CAII and/or NLCA trips may not be able to fish all of the ETAA trips acquired through a trip exchange(s).

Access area codes: Closed Area II = CAII; Nantucket Lightship Closed Area = NLCA; Elephant Trunk Access Area = ETAA; Hudson Canyon Access Area=HCAA

Signature of this form certifies that the information provided on this form is true, complete and correct to the best of the vessel owner's knowledge, and made in good faith (18 U.S.C. 1001). Making a false statement on this form is punishable by law.

Notwithstanding any other provision of the 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. Send comments regarding this burden estimate or suggestions for reducing this burden to NMFS, One Blackburn Drive, Gloucester MA 01930; and to OMB, Paperwork Reduction Project, Washington, DC 20509.



Broken Trip Adjustment Sheet

SUBMIT TO:

NATIONAL MARINE FISHERIES SERVICE
SUSTAINABLE FISHERIES DIVISION
ONE BLACKBURN DRIVE, GLOUCESTER, MA 01930
FAX: (978) 281-9135

Information:

Owner name/corporation:

Vessel name:

Permit #:

USCG doc / State reg #:

Vessel operator:

Reason for broken trip:

Date VMS Broken Trip Notification Form sent to NMFS:

Pounds of scallops landed:

Access Area fished:

Reason for broken trip:

Broken trip departure date:

Broken trip landing date:

Vessel owner signature: _____ Date: _____

This form is required under 50 CFR § 648.60 to monitor the days-at-sea allocation and usage for limited access scallop permit holders. Signature of this form certifies that permit holder requirements specified in 50 CFR § 648.60, and that the information provided on this form is true, complete and correct to the best of their knowledge, and made in good faith (18 U.S.C. 1001). Making a false statement on this form is punishable by law.

Notwithstanding any other provision of the 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. Send comments regarding this burden estimate or suggestions for reducing this burden to NMFS, One Blackburn Drive, Gloucester MA 01930; and to OMB, Paperwork Reduction Project, Washington, DC 20509.

Macro 19

SCALLOP CATCH REPORT V2

Logbook Page _____

Scallop Meats _____(Lbs)
Yellowtail Kept _____(Lbs)
Yellowtail Discarded _____(Lbs)
Observer Scallop Meats _____(Lbs)
Observer Yellowtail Kept _____(Lbs)
Observer Yellowtail Discard _____(Lbs)

Macro 28

Scallop Broken Trip Notification V1

Estimated Landing Month (01 - 12): __
Estimated Landing Day (01 - 31): __
Estimated Landing Hour (00 - 23): __
Estimated Landing Minute (00 - 59): __

Estimated Scallop Meats: _____(lbs)

Reason for Termination: _____

Macro 29

SCALLOP COMPENSATION TRIP FORM V1

COMPENSATION TRIP

IDENTIFICATION CODE(S):

1. _____ 2. _____ 3. _____
4. _____ 5. _____ 6. _____

YOU HAVE DECLARED A SEA SCALLOP ACCESS
AREA COMPENSATION TRIP(S). PLEASE
ENTER THE TRIP IDENTIFICATION CODE(S)
FOUND ON YOUR COMPENSATION LETTER(S)
OF AUTHORIZATION.

VESSELS MAY ONLY COMBINE COMPENSATION
TRIPS FOR THE SAME ACCESS AREA. A
VESSEL MAY NOT EXCEED ITS PERMIT
CATEGORY POSSESSION LIMIT.

Scallop Broken Trip Notification

| | |
|----------------------------------|--|
| Estimated Landing Month: | <input type="text" value="Select a Month"/> |
| Estimated Landing Day: | <input type="text" value="Select a Day"/> |
| Estimated Landing Hour: | <input type="text" value="Select a Hour"/> |
| Estimated Landing Minute: | <input type="text" value="Select a Minute"/> |
| Estimated Scallop Meats: | <input type="text"/> lbs |
| Reason for Termination: | <input type="text"/> |

Note: You must also mail or fax a completed broken trip adjustment sheet to NMFS to receive a compensation trip.

You must select an Estimated Landing Month.

Scallop Catch Report

| | |
|--------------------------------------|--------------------------------------|
| Logbook Page | <input type="text" value="0"/> |
| Scallop Meats | <input type="text" value="0"/> (lbs) |
| Yellowtail Kept | <input type="text" value="0"/> (lbs) |
| Yellowtail Discarded | <input type="text" value="0"/> (lbs) |
| Observer Scallop Meats | <input type="text" value="0"/> (lbs) |
| Observer Yellowtail Kept | <input type="text" value="0"/> (lbs) |
| Observer Yellowtail Discarded | <input type="text" value="0"/> (lbs) |

Scallop Access Area Compensation Trip Form

You have declared a Sea Scallop Access Area compensation trip(s). Please enter the trip identification code(s) found on your compensation letter(s) of authorization.

Vessels may only combine compensation trips for the same Access Area. A vessel may not exceed its permit category possession limit.

Compensation Trip Identification Code(s):

| | | |
|-------------------------|-------------------------|-------------------------|
| 1. <input type="text"/> | 2. <input type="text"/> | 3. <input type="text"/> |
| 4. <input type="text"/> | 5. <input type="text"/> | 6. <input type="text"/> |

You must enter at least one Identification Code of 6 numbers.

Title 50: Wildlife and Fisheries

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

§ 648.1 Purpose and scope.

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

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

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

§ 648.2 Definitions.

[Link to an amendment published at 72 FR 11271, Mar. 12, 2007.](#)

[Link to an amendment published at 72 FR 20038, April 23, 2007.](#)

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 butterfly or *butterfish* means *Peprilus triacanthus*.

Atlantic croaker means *Micropogonias undulatus*.

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

Atlantic herring means *Clupea harengus*.

Atlantic herring carrier means a fishing vessel with an Atlantic herring permit that does not have any gear on board capable of catching or processing herring and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel.

Atlantic herring dealer means:

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

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

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

Atlantic 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 magelanicus*, throughout its range.

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

Black sea bass means *Centropristis striata*.

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

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

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

Bluefish means *Pomotomus saltatrix*.

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

Bonito means *Sarda sarda*.

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

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

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

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft³ (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft³ (35.24 L) of in-shell Atlantic sea scallops.

Cage means a container with a standard unit of volumetric measurement containing 60 ft³ (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.

Category 1 herring vessel means a vessel issued a permit to fish for Atlantic herring that is required to have an operable VMS unit installed on board pursuant to §648.205(b).

Chafing gear or *cookies*, with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other

material attached to or between the steel rings of a sea scallop dredge.

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

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

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

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

Commission means the Atlantic States Marine Fisheries Commission.

Conger eel means *Conger oceanicus*.

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

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

Cunner means *Tautoglabrus adspersus*.

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

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

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

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

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

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

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

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

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, shrimp trawls (with a properly configured grate as defined under this part), and surfclam and ocean quahog dredges.

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

Fishing year means:

- (1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.
- (2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.
- (3) For the tilefish fishery, from November 1 through October 31 of the following year.
- (4) For all other fisheries in this part, from January 1 through December 31.

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

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus*.

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

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

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

Hagfish means *Myxine glutinosa*.

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

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

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

Harbor porpoise means *Phocoena phocoena*.

Harbor Porpoise Review Team (HPRRT) 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).

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

Inshore exempted species means the following species:

Bay scallop— *Aequipecten irradians* .

Blood arc clam— *Anadara ovalis* .

Blood worm— *Glycera dibranchiata* .

Blue crab— *Callinectes similis* and *Callinectes sapidus* .

Blue mussel— *Mytilus edulis* .

Green crab— *Carcinus maenas* .

Hermit crab— *Clibanarius vittatus* , *Pagurus pollicaris* and *Pagurus longicarpus* .

Japanese shore crab— *Hemigrapsus sanguineus* .

Oyster— *Crassostrea virginica* and *Ostrea edulis* .

Quahog— *Mercenaria mercenaria* .

Razor clam— *Ensis directus* .

Sand worm— *Nereis virens* .

Soft clam— *Mya arenaria* .

Spider crab *Libinia emarginata* .

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

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

John Dory means *Zenopsis conchifera*.

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

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

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.

Little tunny means *Euthynnus alleteratus* .

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.

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

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

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.

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

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

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

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

Mullet means any species in the family Mugilidae.

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

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

NAFO means Northwest Atlantic Fisheries Organization.

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

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

NEFSC means the Northeast Fisheries Science Center, NMFS.

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

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

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

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

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

American plaice— *Hippoglossoides platessoides*.

Atlantic cod— *Gadus morhua*.

Atlantic halibut— *Hippoglossus hippoglossus*.

Haddock— *Melanogrammus aeglefinus*.

Ocean Pout— *Macrozoarces americanus*.

Offshore Hake— *Merluccius albidus*.

Pollock— *Polachius virens*.

Redfish— *Sebastes fasciatus*.

Red hake— *Urophycis chuss*.

Silver hake (whiting)— *Merluccius bilinearis*.

White hake— *Urophycis tenuis*.

Windowpane flounder— *Scophthalmus aquosus*.

Winter flounder— *Pleuronectes americanus*.

Witch flounder— *Glyptocephalus cynoglossus*.

Yellowtail flounder— *Pleuronectes ferruginea*.

Northern shrimp means *Pandalus borealis*.

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.

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Access Areas specified in §§648.59 and 648.60, Rotational Closed Areas specified in §648.58, or EFH Closed Areas specified in §648.61.

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

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

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

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

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

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

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

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.

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

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

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

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

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

Processor, with respect to the Atlantic surf clam and ocean quahog fisheries, 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.

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

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

Recreational fishing vessel, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted.

Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

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

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

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

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

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

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

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

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

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

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

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

Rotational Closed Area, with respect to the Atlantic sea scallop fishery, means an area that is closed only to scallop fishing for a period defined in §648.58.

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

Runaround gillnet or *encircling gillnet* means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than 1/4 the length of the net or with an opening greater than 1/4 the length of the net, if the opening is obstructed in any fashion.

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

Scup means *Stenotomus chrysops*.

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

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

Sea Scallop Access Area, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as an area with area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the specified Sea Scallop Access Area. Such measures are not applicable in

Open Areas defined above.

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

Sea raven means *Hemitripteris americanus*.

Searobin means any species of the family Triglidae.

Sector, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

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

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

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

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

Smooth dogfish means *Mustelis canis*.

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

Spiny dogfish means *Squalus acanthias*.

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

Spot means *Leiostomus xanthurus*.

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

Squid means *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).

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

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

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

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

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*.

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

Tautog (blackfish) means *Tautoga onitas*.

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

Tilefish means *Lopholatilus chamaeleonticeps*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

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

[61 FR 34968, July 3, 1996]

Editorial Note: For Federal Register citations affecting §648.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 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.

Link to an amendment published at 72 FR 11271, Mar. 12, 2007.

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

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

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

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

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

(B) *Application/renewal restrictions*. All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

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

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

(E) *Replacement vessels*. With the exception of vessels that have obtained a limited access Handgear A permit described in §648.82(b)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

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

(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's baseline specifications, as applicable.

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

(1) The vessel's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(2) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. 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*. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in §648.82(k), and the NE Multispecies DAS Transfer Program as specified in §648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

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

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

section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

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

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

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

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

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

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

Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

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

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

(2) *Atlantic sea scallop vessels—* Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops 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, be replacing a vessel that was issued a limited access scallop permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

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

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

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

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

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

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

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

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

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

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

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

(M) *Percentage ownership restrictions.* (1) For any vessel acquired after March 1, 1994, a vessel owner

is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or in any other 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)(M)(1) of this section, are eligible to renew such permits(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.

(N) [Reserved]

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) 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, 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops, or less, except vessels that fish exclusively in state waters for scallops, must comply with one of the permit requirements described in paragraphs (a)(2)(ii)(A) or (B) of this section, unless otherwise exempted under paragraph (a)(2)(ii)(C) of this section, and must comply with the application procedures specified in paragraphs (a)(2)(ii)(D) and (E) of this section.

(A) *Non-VMS general scallop permit.* To possess or land up to, but not more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) in-shell scallops per trip that are sold or are intended to be sold, a vessel must apply for and be issued a non-VMS general scallop permit. A vessel issued a non-VMS general scallop permit may not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops at any time.

(B) *VMS general scallop permit.* To possess or land more than 40 lb (18.14 kg) of shucked meats or 5 bu (176.2 L) of in-shell scallops, but no more than 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops, a vessel must apply for and be issued a VMS general scallop permit.

Issuance of a VMS general scallop permit requires the vessel owner to submit a copy of the vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in §648.9.

(C) *Vessels without general scallop permits.* No scallop permit is required for a vessel that possesses or lands up to 40 lb (18.14 kg) of shucked meats or 5 bu (176.2 L) of in-shell scallops per trip, provided such scallops are not, or are not intended to be, sold, traded or bartered.

(D) [Reserved]

(E) *General scallop permit restrictions.* A vessel may be issued a general scallop permit in only one category during a fishing year. The owners of a vessel issued a general scallop permit must elect a permit category upon the vessel's permit application and shall have one opportunity to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(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 —(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 for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

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

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

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

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

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

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

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

(I) [Reserved]

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

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

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

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

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

(4) *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.

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

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

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

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

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

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

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

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

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

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

(I) [Reserved]

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

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

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

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

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

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

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

(ii) [Reserved]

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

(i) *Loligo squid/butterfish and Illex squid moratorium permits Illex squid moratorium is in effect until July 1, 2009.*

(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain *Loligo* squid, butterfish, or *Illex* squid in excess of the incidental catch allowance in paragraph (a)(5)(ii) of this section in the EEZ, a vessel must have been issued a *Loligo* squid and butterfish moratorium permit or *Illex* squid moratorium permit, as applicable, for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

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

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

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

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

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

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

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

(I) [Reserved]

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

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

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

(ii) *Squid/butterfish incidental catch permit.* 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, or up to 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in §648.21.

(iii) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ, except for vessels that exceed either 165 feet in length overall (LOA) and 750 gross registered tons, or a shaft horsepower of 3000 shp. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified under §648.6(a)(2).

(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.

(6) *Scup vessels.* Beginning on January 1, 1997, and subject to the eligibility requirements specified in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup for sale, barter or trade, in or from the EEZ north of 35°15.3' N. lat. Any vessel, other than a party or charter boat, that observes the possession limit restrictions established pursuant to, and the prohibition on sale specified in, §648.125 is exempt from the permit requirement.

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

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

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

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

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

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

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

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

(I) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) [Reserved]

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

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

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

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

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

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat permit to fish for,

possess, or land Atlantic bluefish in or from the EEZ if it is carrying passengers for hire. Persons on board such vessel must observe the possession limits established pursuant to §648.164, and the prohibitions on sale specified in §648.14(w).

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

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

(1) *Category A permit (vessels without NE multispecies or scallop limited access DAS permits)* . The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

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

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

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

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

(6) *Category G permit (vessels restricted to fishing south of 38°20' N. lat. as described in §648.92(b)(9) that do not qualify for a monkfish limited access Category A, B, C, or D permit)* . The vessel landed at least 50,000 lb (22,680 kg) tail weight or 166,000 lb (75,296 kg) whole weight of monkfish in the area south of 38°00' N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

(7) *Category H permit (vessels restricted to fishing south of 38°20' N. lat. as described in §648.92(b)(9) that do not qualify for a monkfish limited access Category A, B, C, D, or G permit)* . The vessel landed at least 7,500 lb (3,402 kg) tail weight or 24,900 lb (11,294 kg) whole weight of monkfish in the area south of 38°00' N. lat. during the period March 15 through June 15 in the years 1995 to 1998.

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

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

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

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

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

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

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

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

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

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

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

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

51 (2) A vessel GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(2)

and (4) of this section, may qualify for and fish under the permit category of the smaller vessel.

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

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

(I) [Reserved]

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

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

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

(M) *Notification of eligibility for Category G and H permits.* (1) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available to inform them that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section and that they qualify for a limited access monkfish Category G or H permit. Vessel owners that pre-qualify for a Category G or H permit must apply for the limited access permit for which they pre-qualified on or before April 30, 2006, to meet the qualification requirements.

(2) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish Category G or H permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish Category G or H permit on or before April 30, 2006, by submitting written evidence that the vessel meets the qualification requirements described in paragraph (a)(9)(i)(A)(6) or (7) of this section.

(N) *Appeal of denial of permit.* (1) An applicant denied a limited access monkfish Category G or H permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in

concluding that the vessel did not meet the criteria described in paragraph (a)(9)(i)(A)(6) or (7) of this section. The appeal shall set forth the applicant's belief that the Regional Administrator made an error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The Regional Administrator's decision on the appeal is the final decision of the Department of Commerce.

(3) *Status of vessels pending appeal.* (i) A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in §648.92(b)(1) and must report the use of monkfish DAS according to the provisions of §648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the letter authorizing temporary participation in the monkfish fishery shall become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter. If the appeal is approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

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

(ii) [Reserved]

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

(1) A vessel that possesses herring solely for its own use as bait, providing the vessel does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board; or

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

(B) *Eligibility.* A vessel of the United States is eligible for and may be issued an Atlantic herring permit to fish for, catch, take, harvest, and possess Atlantic herring in or from the EEZ unless the vessel is 165 feet (50.3 m) in length overall (LOA), or > 750 GRT (680.4 mt), or the vessel's total main propulsion machinery is > 3,000 horsepower.

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

(iii) *Atlantic herring carrier vessels—letter of authorization.* An Atlantic herring carrier vessel permitted under paragraph (a)(10)(i)(A) of this section must have been issued and have on board the vessel a letter of authorization to transport Atlantic herring caught by another permitted fishing vessel. The letter of authorization exempts such vessel from the VMS and IVR reporting requirements as specified in subpart K, except as otherwise required by this part. An Atlantic herring carrier vessel may request and obtain a letter of authorization from the Regional Administrator.

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

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

(12) *Tilefish vessels.* Any vessel of the United States must have been issued and carry on board a valid tilefish vessel permit to fish for, possess, or land tilefish in or from the tilefish management unit.

(i) *Limited access tilefish permits* —(A) *Eligibility.* A vessel may be issued a limited access tilefish permit if it meets any of the following limited access tilefish permit criteria, provided that the vessel landed the specified amounts of tilefish to meet such criteria within the tilefish management unit:

(1) *Full-time tier 1 category.* The vessel landed at least 250,000 lb (113,430 kg) of tilefish per year for any 3 years between 1993 and 1998, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(2) *Full-time tier 2 category.* The vessel landed at least 30,000 lb (13,612 kg) per year for any of 3 years between 1993 and 1998, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(3) *Part-time category.* The vessel landed 10,000 lb (4,537 kg) of tilefish in any 1 year between 1988 and 1993 and 10,000 lb (4,537 kg) in any 1 year between 1994 and 1998, or landed 28,000 lb (12,904 kg) of tilefish in any 1 year between 1984 and 1993, at least 1 lb (2.20 kg) of which was landed prior to June 15, 1993.

(B) *Application/renewal restriction* —(1) *Initial application.* A vessel owner must apply for an initial limited access tilefish permit before November 1, 2002, one year from the effective date of the regulations.

(2) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

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

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

(E) *Replacement vessels.* The provisions of paragraph (a)(1)(i)(E) of this section apply.

(F) *Upgraded vessel.* The provisions of paragraph (a)(1)(i)(F) of this section apply.

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

(H) *Vessel baseline specifications.* The provisions of paragraph (a)(1)(i)(H) of this section apply.

(I) *Limited access permit restrictions.* (1) A vessel may be issued a limited access tilefish permit for only one category during a fishing year.

(2) A vessel issued a limited access tilefish permit may not be issued an incidental catch tilefish permit during a fishing year.

(J) *Confirmation of permit history.* The provisions of paragraph (a)(1)(i)(J) of this section apply.

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

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

(M) *Appeal of denial of a permit.* (1) Any applicant denied a tilefish limited access permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraphs (a)(12)(i)(A)(1), (2), or (3) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

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

(ii) *Tilefish incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a limited access tilefish permit is eligible for and may be issued a tilefish incidental catch permit to possess or land tilefish in or from the tilefish management unit. Such vessel is subject to the restrictions in §648.292.

(13) *Red Crab vessels.* Any vessel of the United States must have been issued and have on board a valid red crab vessel permit to fish for, catch,

possess, transport, land, sell, trade, or barter, any red crab or red crab part in or from the EEZ portion of the Red Crab Management Unit.

(i) *Limited access red crab permit*—(A) *Eligibility*. A vessel, or its replacement, may be issued a limited access red crab permit if the vessel's total landings averaged greater than 250,000 lb (113,400 kg) of red crab per year for the 3 years beginning March 1, 1997, through February 29, 2000. To calculate the average value per year, the total landings of whole red crab, or its equivalent by weight, between March 1, 1997, and February 29, 2000, inclusive, shall be divided by 3. If the quotient is greater than 250,000 lb (113,400 kg), the vessel meets the landings criteria. For example, if a vessel caught greater than 750,000 lb (340,200 kg) in the 3-year qualifying time span—even if it fished just 2 of those 3 years—the average per year would be greater than 250,000 lb (113,400 kg).

(B) *Application/renewal restriction*—(1) *Initial application for 2002*. A vessel owner must apply for an initial limited access red crab permit before April 8, 2003. No vessel owner may apply for an initial limited access red crab permit after this date.

(2) *Fishing years 2003 and beyond*. (i) For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(ii) A limited-access permit holder may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year. Any limited-access permit holder who has submitted a binding declaration must submit either a new binding declaration or a renewal application for the year after which they were declared out of the fishery.

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

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

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

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

(3) A vessel that replaced a vessel that fished for and landed red crab between March 1, 1997, and February 29, 2000, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the vessel's length, GRT, and NT is increased no more than once. Any increase in any of the aforementioned specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any increase in any of the aforementioned specifications of vessel size occurs, any increase in the other specifications must be performed at the same time.

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

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, and NT) of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

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

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

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

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

(M) *Notification of eligibility for 2002*. (1) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the qualification criteria described in paragraph (a)(13)(i)(A) of this section and that they qualify for a limited access red crab permit. Vessel owners must still apply by April 8, 2003 to complete the qualification requirements.

(2) If the vessel owner has not been notified that the vessel is eligible to be issued a limited access red crab permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access red crab permit by April 8, 2003 by submitting evidence that the vessel meets the requirements described in paragraph (a)(13)(i)(A) of this section.

(N) *Appeal of denial of a permit*. (1) Any applicant denied a limited access red crab permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(13)(i)(A) of this section. The appeal must set forth in writing the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(3) *Status of vessels pending appeal*. A vessel denied a limited access red crab permit may fish for and land red crab as if a limited access permit had been issued, provided that the denial has been appealed, the appeal is pending, the vessel owner has presented prima facie evidence that the decision was made in error, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. During the appeal, the vessel may only land up to 75,000 lb (34,019 kg) of red crab per trip. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

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

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

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

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

(2) *Vessel permit information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all 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, the names of all owners having a 25-percent interest or more; 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 July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before July 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date on which the contract was signed.

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

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

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in §648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) [Reserved]

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

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

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

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

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

(vi) An application for an Atlantic herring permit must also contain the following information:

(A) If the vessel operator caught > 500 mt of Atlantic herring in the previous fishing year, a statement so stating;

(B) If the vessel operator intends to catch > 500 mt of Atlantic herring in the current fishing year, a statement so stating;

(C) If the vessel operator either caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, a copy of a vendor installation receipt from a NMFS-approved VMS vendor, as described in §648.9, must also be provided:

(1) From January 10, 2001, through March 12, 2001, not later than March 12, 2001;

(2) After March 12, 2001, with the application.

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

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

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation,

and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in §648.7;

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

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

(iv) 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 VMS, has failed to meet all of the VMS requirements specified in §§648.9 and 648.10; or

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

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

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

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

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

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

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

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

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

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

[61 FR 34968, July 3, 1996]

Editorial Note: For Federal Register citations affecting §648.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops in excess of 40 lb (18.1 kg); NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

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

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

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

(e) *Fees.* Same as §648.4(d).

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

(g) *Expiration.* Same as §648.4(g).

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

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

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

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

(l) *Alteration.* Same as §648.4(i).

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

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

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

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 64 FR 57593, Oct. 26, 1999; 64 FR 66587, Nov. 29, 1999; 65 FR 45851, July 26, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49143, Sept. 26, 2001; 67 FR 63231, Oct. 10, 2002; 68 FR 49699, Aug. 19,

§ 648.6 Dealer/processor permits.

[Link to an amendment published at 72 FR 11273, Mar. 12, 2007.](#)

[Link to an amendment published at 72 FR 20038, April 23, 2007.](#)

(a) *General.* (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterflyfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in §648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies, skates, and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies, skates, and/or Atlantic herring, provided the vessel complies with the provisions of §648.13. Persons aboard vessels receiving transfers of scup at sea from other vessels are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving scup, provided the vessel complies with §648.13(i)(2).

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

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

(c) *Information requirements.* Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a 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, name of at-sea processor vessel, and current vessel documentation papers.

(d) *Fees.* Same as §648.4(d).

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

(f) *Expiration.* Same as §648.4(g).

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

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

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

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

(k) *Alteration.* Same as §648.4(i).

(l) *Display.* Same as §648.5(m).

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

(n) *Sanctions.* Same as §648.4(m).

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 64 FR 57593, Oct. 26, 1999; 65 FR 45851, July 26, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49699, Aug. 19, 2003; 69 FR 4864, Feb. 2, 2004; 69 FR 16178, Mar. 29, 2004; 69 FR 30841, June 1, 2004]

§ 648.7 Recordkeeping and reporting requirements.

[Link to an amendment published at 72 FR 11274, Mar. 12, 2007.](#)

[Link to an amendment published at 72 FR 20038, April 23, 2007.](#)

(a) *Dealers* —(1) *Detailed report.* Federally permitted dealers must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for commercial purposes, other than solely for transport on land, within the time periods specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

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

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

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

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

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in §635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NMFS will provide dealers with a skate species identification guide.

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

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

supplied by the Regional Administrator:

- (i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.
- (ii) Surfclam and ocean quahog processors and dealers whose plant processing capacities change more than 10 percent during any year shall notify the Regional Administrator in writing within 10 days after the change.
- (iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.
- (b) *Vessel owners or operators* —(1) *Fishing Vessel Trip Reports* —(i) The owner or operator of any vessel issued a valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or Loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).
- (ii) *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 Administrator, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.
- (iii) *Vessel reporting requirements for skates*. In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.
- (2) *IVR system reports* —(i) *Atlantic herring owners or operators*. The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of §648.7.
- (A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by §648.4(c)(2)(vi)(C) that is required by §648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system each week (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.
- (B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by §648.205 to have a VMS unit on board and that catches 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.
- (C) An owner or operator of any vessel that catches 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.
- (D) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.
- (ii) *Tilefish vessel owners or operators*. The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.
- (iii) *Red crab vessel owners and operators*. The owner or operator of any vessel issued a limited access permit for red crab must submit a red crab catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, DAS confirmation number, trip during which species are caught, date landed, condition (whole, half sections with gills, half sections without gills), and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.
- (c) *When to fill out a log report*. Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port with fish. Information that may be considered unascertainable prior to entering port with fish includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.
- (d) *Inspection*. 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 Administrator to make such inspections, must make immediately available for inspection copies of the required reports and the records upon which the reports are or will be based. At any time during or after a trip, vessel owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.
- (e) *Record retention*. Records upon which trip-level reports are based must be retained and be available for immediate review for a total of 3 years after the date of the last entry on the report. Dealers must retain the required records at their principal place of business. Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year and must be retained for a total of 3 years after the date of the last entry on the log.
- (f) *Submitting reports* —(1) *Dealer or processor reports*. (i) Detailed reports required by paragraph (a)(1) (i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.
- (ii) [Reserved]
- (iii) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.
- (iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) may be submitted after the detailed weekly report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.
- (v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) of this section must be submitted with the detailed report, as required under paragraphs (f)(1)(i) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

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

(2) *Fishing vessel log reports.* (i) Fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which reports are to be submitted, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report stating so must be submitted.

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

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

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

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 62 FR 14646, Mar. 27, 1997; 63 FR 52640, Oct. 1, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 57593, Oct. 26, 1999; 65 FR 1569, Jan. 11, 2000; 65 FR 45851, July 26, 2000; 65 FR 60895, Oct. 13, 2000; 65 FR 77465, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 67 FR 3444, Jan. 24, 2002; 67 FR 63231, Oct. 10, 2002; 68 FR 49699, Aug. 19, 2003; 69 FR 13495, Mar. 23, 2004; 70 FR 21982, Apr. 28, 2005; 72 FR 4216, Jan. 30, 2007]

§ 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 VMS requirements.

Link to an amendment published at 72 FR 11274, Mar. 12, 2007.

(a) *Approval.* The Regional Administrator will annually approve VMSs 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 VMSs will be published in the Federal Register upon addition or deletion of a VMS from the list. In the event that a VMS is deleted from the list, vessel owners that purchased a VMS unit that is part of that VMS 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 Administrator.

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

(1) The VMS 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 VMS shall be fully automatic and operational at all times, regardless of weather and environmental conditions, unless exempted under paragraph (c)(2) of this section.

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

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS 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 VMS shall be capable of providing network message communications between the vessel and shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VMS 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 a file format acceptable to NMFS.

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

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

(i) At least every hour, 24 hours a day, throughout the year.

(ii) NMFS may initiate at its discretion, the transmission of a signal indicating the vessel's accurate position, at least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in §648.10(b) or that are required to fish with a VMS as specified in §648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in §648.85(b) for each groundfish trip that the vessel has elected to fish in either the CA II Yellowtail Flounder SAP, the CA I Hook Gear Haddock SAP, the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program.

(iii) At least twice per hour, 24 hours a day, throughout the year, for vessels issued a general scallop permit and subject to the requirements of §648.4(a)(2)(ii)(B).

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

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

(g) *Tampering.* Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes

- (B) For vessels fishing with a valid NE multispecies limited access permit, 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
- (C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times.
- (D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in §648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power down code, that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.
- (ii) *Letter of exemption* —(A) *Application*. A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (i.e., the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.
- (B) *Issuance*. Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.
- (d) *Presumption*. If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.
- (e) *Replacement*. 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.
- (f) *Access*. As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.
- (g) *Tampering*. Tampering with a VMS, a VMS unit, or a VMS 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.
- [61 FR 34968, July 3, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 63 FR 58329, Oct. 30, 1998; 64 FR 54745, Oct. 7, 1999; 65 FR 77466, Dec. 11, 2000; 69 FR 22946, Apr. 27, 2004; 69 FR 67796, Nov. 19, 2004; 70 FR 21941, Apr. 28, 2005; 70 FR 48867, Aug. 22, 2005; 70 FR 76426, Dec. 27, 2005; 71 FR 33224, June 8, 2006]

§ 648.10 DAS and VMS notification requirements.

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

VMS Demarcation Line

1. Northern terminus point (Canada landmass)
2. A point east of West Quoddy Head Light
3. A point east of Little River Light
4. Whistle Buoy "8BI" (SSE of Baker Island)
5. Isle au Haut Light
6. Pemaquid Point Light
7. A point west of Halfway Rock
8. A point east of Cape Neddick Light
9. Merrimack River Entrance "MR" Whistle Buoy
10. Halibut Point Gong Buoy "1AHP"
11. Connecting reference point
12. Whistle Buoy "2" off Eastern Point
13. _____ The Graves Light (Boston)
14. _____ Minots Ledge Light
15. _____ Farnham Rock Lighted Bell Buoy
16. Cape Cod Canal Bell Buoy "CC"
17. A point inside Cape Cod Bay
18. Race Point Lighted Bell Buoy "RP"
19. Peaked Hill Bar Whistle Buoy "2PH"
20. _____ Connecting point, off Nauset Light
21. A point south of Chatham "C" Whistle Buoy
22. A point in eastern Vineyard Sound
23. A point east of Martha's Vineyard
24. A point east of Great Pt. Light, Nantucket
25. A point SE of Sankaty Head, Nantucket
26. A point west of Nantucket
27. Squibnocket Lighted Bell Buoy "1"
28. _____ Wilbur Point (on Sconticut Neck)
29. _____ Mishaum Point (on Smith Neck)
30. Sakonnet Entrance Lighted Whistle Buoy "SR"
31. Point Judith Lighted Whistle Buoy "2"
32. _____ A point off Block Island Southeast Light
33. Shinnecock Inlet Lighted Whistle Buoy "SH"
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)
35. Barnegat Lighted Gong Buoy "2"
36. _____ A point east of Atlantic City Light
37. _____ A point east of Hereford Inlet Light
38. A point east of Cape Henlopen Light
39. A point east of Fenwick Island Light

40. _____ A point NE of Assateague Island (VA)
41. Wachapreague Inlet Lighted Whistle Buoy "A"
42. A point NE of Cape Henry
43. _____ A point east of Currituck Beach Light
44. Oregon Inlet (NC) Whistle Buoy
45. Wimble Shoals, east of Chicamacomico
46. _____ A point SE of Cape Hatteras Light
47. Hatteras Inlet Entrance Buoy "HI"
48. Ocracoke Inlet Whistle Buoy "OC"
49. _____ A point east of Cape Lookout Light
50. Southern terminus point

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §648.9(b), or as modified pursuant to §648.9 (a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit or a VMS general scallop permit;

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under §648.60;

(iii) A scallop vessel fishing under the Small Dredge program specified in §648.51(e);

(iv)

(v) A scallop vessel issued a VMS or a Non-VMS general scallop permit when fishing under the Sea Scallop Area Access Program specified under §648.60;

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

(vii) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS.

(vii)–(viii) [Reserved]

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

(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 permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out (i.e., not fishing under the applicable DAS program) of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing exclusively in the Eastern U.S./Canada Area, as described in §648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to §648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with §648.85(a)(3)(ii)(A).

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

(3)(i) A vessel issued a limited access monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b) (3)(iii) of this section.

(ii) [Reserved]

(iii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under §648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Vessels electing to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. A vessel that calls in is exempt from the prohibition specified in §648.14(c)(2).

(4) *Atlantic sea scallop vessel VMS notification requirements.* (i) Less than 1 hour prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in §648.60, are required to comply with the additional VMS notification requirements specified in paragraphs (b)(4)(iii) and (iv) of this section, except that scallop vessels issued Occasional scallop permits not participating in the Area Access Program specified in §648.60 may provide the specified information to NMFS by calling NMFS. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in §648.60 are required to comply with the additional VMS notification requirements specified in paragraphs (b)(4)(iii) and (iv) of this section.

(iii) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report, through the VMS e-mail messaging system, of its intention to fish for scallops, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for open areas and each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive this notification period if it is determined that there is insufficient time to provide such notification prior to a Sea Scallop Access Area opening or beginning of the fishing year. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(iv) In addition to the information required under paragraph (b)(4)(iii) of this section, and for the purpose of selecting vessels for observer deployment, each participating vessel owner or operator shall provide notice to NMFS of the time, port of departure, and open area or specific Sea Scallop Access Area to be fished, at least 72 hr, unless otherwise notified by the Regional Administrator, prior to the beginning of any scallop trip.

(c) *Call-in notification.* The owner of a vessel issued a limited access monkfish or red crab permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the Occasional category and who has not elected to fish under the VMS notification requirements of paragraph (b) of this section, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following

information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iii) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of §648.92(b)(2)(i), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iii) of this section.

(4) The Regional Administrator 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 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§648.10(b)(2)(iii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in §648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in §648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

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

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

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

(2) *Call-in notification.* (i) Notify the Regional Administrator by calling the Regional Administrator 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 Administrator of early withdrawal from the program by calling the Regional Administrator, 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 Administrator.

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

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

(f) *Additional NE multispecies call-in requirements* —(1) *Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit or the Handgear A permit category, vessels subject to the spawning season restriction described in §648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if required by the Regional Administrator) and provide the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* A vessel subject to the gillnet restriction described in §648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14647, Mar. 27, 1997; 62 FR 15386, Apr. 1, 1997; 62 FR 51381, Oct. 1, 1997; 63 FR 11593, Mar. 10, 1998; 63 FR 15329, Mar. 31, 1998; 63 FR 42592, Aug. 10, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 24072, May 5, 1999; 64 FR 31149, June 10, 1999; 64 FR 54745, Oct. 7, 1999; 64 FR 55825, Oct. 15, 1999; 65 FR 21664, Apr. 24, 2000; 66 FR 24056, May 11, 2001; 67 FR 50305, Aug. 1, 2002; 67 FR 63232, Oct. 10, 2002; 69 FR 22947, Apr. 27, 2004; 69 FR 35214, June 23, 2004; 69 FR 63472, Nov. 2, 2004; 69 FR 67796, Nov. 19, 2004; 70 FR 2823, Jan. 18, 2005; 70 FR 21941, Apr. 28, 2005; 70 FR 31339, June 1, 2005; 70 FR 54306, Sept. 14, 2005; 70 FR 48867, Aug. 22, 2005; 71 FR 33224, June 8, 2006; 71 FR 62183, Oct. 23, 2006]

Effective Date Note: At 71 FR 34844, June 16, 2006, §648.10 was amended by suspending paragraphs (b)(4)(ii) through (iv), effective June 16, 2006 through Dec. 13, 2006. At 71 FR 69073, Nov. 29, 2006, the effective date was extended from Dec. 13, 2006 through June 11, 2007.

§ 648.11 At-sea sea sampler/observer coverage.

[Link to an amendment published at 72 FR 20038, April 23, 2007.](#)

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer.

(1) For the purpose of deploying at-sea observers, sea scallop vessels are required to notify NMFS of scallop trips as specified in §648.10(b)(4).

Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit, or reduced accrual rate of DAS.

(2) [Reserved]

(3) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (g) of this section.

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

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

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

- (1) Provide accommodations and food that are equivalent to those provided to the crew.
- (2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.
- (3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.
- (4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.
- (5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.
- (6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.
- (7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

- (1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.
- (2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

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

- (1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.
- (2) The owner or operator of the vessel complies with all other provisions of this part.
- (3) The observer is approved by the Regional Administrator.

(g) *Atlantic sea scallop observer program* —(1) *General*. Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under §648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in §648.60, are required to comply with the additional notification requirements specified in paragraphs (g)(2) of this section, except that scallop vessels issued Occasional scallop permits not participating in the Area Access Program specified in §648.60 may provide the specified information to NMFS by calling NMFS. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in §648.60 are required to comply with the additional VMS notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, or the vessel manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the owner, operator, or vessel manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures*. For the purpose of determining if an observer will be deployed on a vessel for a specific trip, a vessel issued a limited access permit fishing in open areas or in the Sea Scallop Area Access program specified in §648.60, or a vessel issued a general category scallop permit and fishing in the Sea Scallop Area Access program specified in §648.60, is required to comply with the following notification requirements:

(i) Prior to the 25th day of the month preceding the month in which fishing for scallops is to take place, the vessel owner or operator must submit, through the VMS e-mail messaging system, notice of its intention to fish for scallops, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for open areas and each Sea Scallop Access Area or open area in which it intends to fish. General category vessels are required to submit this information only for Sea Scallop Access Area trips. The e-mail address shall be provided to vessels in a Small Entity Compliance Guide issued by the Regional Administrator. The Regional Administrator may waive this notification period if it is determined that there is insufficient time to provide such notification prior to a Sea Scallop Access Area opening or beginning of the fishing year. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) For each scallop trip, the vessel owner, operator, or vessel manager shall notify NMFS by telephone, using the phone number provided by the Regional Administrator in the Small Entity Compliance Guide, and provide the following information: Vessel Name; contact name and number; date and time of departure; port of departure; area to be fished (either open areas or the specific Sea Scallop Access Area), and fishing as a scallop dredge, scallop trawl or general category vessel.

(3) *Selection of scallop fishing trips for observer coverage*. Based on predetermined coverage levels for various sectors of the scallop fishery that are provided by NMFS in writing to all observer service provider approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, on the specified trip within 24 hours of the vessel owner's, operator's, or vessel manager's notification of the prospective trip as specified in paragraph (g)(2)(ii) of this section. Any request to carry an observer may be waived by NMFS. With the exception of vessels issued a non-VMS general category scallop permit that are fishing in an access area, all waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. Waivers for vessels issued a non-VMS general category scallop permit will be issued by fax, if possible, or by phone if no fax number is available.

(4) *Procurement of observer services by scallop vessels*. (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the Northeast Fisheries Observer Program (herein after NMFS/NEFOP certified) from an observer service provider approved by NMFS under paragraph (h) of this section. A list of approved observer service providers shall be posted on the NOAA/NEFOP website at <http://www.nefsc.noaa.gov/femad/fsb/>. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 72 hours notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 72 hours of the advance notification to the provider due to the unavailability of an observer, may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hours, if the conditions of this paragraph (g)(4)(ii) are met.

(5) Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. Vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area trips or additional scallop catch per day in Access Areas in order to help defray the cost of the observer, under the program specified in §§648.53 and 648.60. Observer service providers are responsible for setting the daily rate for observer coverage on a vessel. NMFS shall determine the reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in an access area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified by Small Entity Compliance Guide of the DAS accrual rate and additional pounds of scallops determined by the Regional Administrator. The Regional Administrator may adjust the DAS accrual rate and additional pounds of scallops if necessary based on economic conditions of the scallop fishery. Vessel owners and observer providers shall be notified of any such adjustments through a letter.

(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section and shall be responsible for paying for the cost of the observer, unless otherwise waived by NMFS, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities* —(1) *General*. An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS's web page as specified in paragraph (g)(4) of this section.

(2) *Existing observer service providers*. Observer service providers that currently deploy certified observers in the Northeast must submit an application containing the information specified in paragraph (h)(3) of this section, excluding any information specified in paragraph (h)(3) of this section that has already been submitted to NMFS.

(3) *Contents of application*. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class (minimum class size of eight).

(x) An Emergency Action Plan (EAP) describing its response to an 'at sea' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation*. (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS website specified in paragraph (g)(4) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers*. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (viii) of this section.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS website specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics*. Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations*. Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers*. An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports* —(A) *Observer deployment reports.* The observer service provider must report to NMFS when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hours of their departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hours of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hours of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, turtles and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least two weeks following any observed trip. An observer that is at sea during the 2-week period must contact NMFS upon his or her return, if requested by NMFS.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5 pm, Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to NMFS within 24 hours of the event or within 24 of learning of the event.

(viii) *Refusal to deploy an observer.* —(A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at §600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: <http://www.st.nmfs.gov/st4/hop/>.

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, paid for as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider; and

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of

this section.

(4) *Probation and decertification*. NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the website at: <http://www.nefsc.noaa.gov/femad/fsb/>.

(5) *Issuance of decertification*. Upon determination that decertification is warranted under paragraph (i) (1) through (3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 65 FR 1569, Jan. 11, 2000; 65 FR 45852, July 26, 2000; 65 FR 77466, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49700, Aug. 19, 2003; 71 FR 33225, June 8, 2006]

Effective Date Note: At 71 FR 34844, June 16, 2006, §648.11 was amended by suspending paragraphs (a)(1) and (a)(2), and adding paragraphs (a)(3), (g), (h), and (i), effective June 16, 2006 through Dec. 13, 2006. At 71 FR 69075, Nov. 29, 2006, paragraphs (g) (h) and (i) were amended, and the effective date was extended through June 11, 2007.

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

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

- (1) Have a detrimental effect on the respective resources and fishery;
- (2) Cause any quota to be exceeded; or
- (3) Create significant enforcement problems.

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

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

[61 FR 58466, Nov. 15, 1996, as amended at 62 FR 37156, July 11, 1997; 65 FR 45852, July 26, 2000; 65 FR 77466, Dec. 11, 2000; 66 FR 49144, Sept. 26, 2001; 68 FR 49700, Aug. 19, 2003]

§ 648.13 Transfers at sea.

[Link to an amendment published at 72 FR 11274, Mar. 12, 2007.](#)

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

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

(2) Vessels issued a Federal multispecies permit under §648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

- (i) The transferring vessel possesses a Federal multispecies permit as specified under §648.4(a)(1);
- (ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and (c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel.

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under §648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(f) *Atlantic herring*. Except for a person who purchases and/or receives Atlantic herring at sea for his own personal use as bait and who does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, any person or vessel is prohibited from transferring, receiving, or attempting to transfer or receive any Atlantic herring taken from the EEZ, and any vessel issued an Atlantic herring permit is prohibited from transferring, receiving, or attempting to transfer or receive, Atlantic herring, unless the person or vessel complies with the following:

- (1) The transferring and receiving vessels have been issued valid Atlantic herring permits and/or other applicable authorization, such as a letter of authorization from the Regional Administrator, to transfer or receive herring.
- (2) The vessel does not transfer to a U.S. vessel, and a U.S. vessel does not receive, > 2,000 lb (907.2 kg) of herring per day in or from a management area closed to directed fishing for Atlantic herring.
- (3) The vessel does not transfer herring in or from an area closed to directed fishing for Atlantic herring to an IWP or Joint Venture vessel.
- (4) The vessel does not transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to §648.200.

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(h) *Skates*. (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under §648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

- (i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under §648.322(b);
- (ii) The vessel and vessel owner or operator comply with the requirements specified at §648.322(b);
- (iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at §648.7; and
- (iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of 1 year from the date of the transfer, a copy of said documentation.

- (i) *Scup*. (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.
- (2) The owner or operator of a vessel issued a Federal scup permit under §648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:
- (i) The transfer occurs between two vessels with Federal scup permits;
 - (ii) The transfer occurs seaward of a boundary line that begins at 40°50' N. lat., 70°00' W. long., and runs south to connect points at 40°15' N. lat., 73°30' W. long.; 37°50' N. lat., 75°00' W. long.; and 35°30' N. lat., 75°00' W. long.;
 - (iii) The donating and receiving vessels possess gear that meets the requirements at §648.123(a)(2), (3), and (4) for commercial scup fishing gear;
 - (iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;
 - (v) There is only one transfer per fishing trip for the donor vessel;
 - (vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;
 - (vii) After removal of scup from the net by the donor vessel, the entire codend, with all its contents, is transferred to the receiving vessel;
 - (viii) Only scup in an amount not to exceed the possession limit are retained by the receiving vessel;
 - (ix) While fishing for scup, all other nets are stored in accordance with §648.23(b)(1); and
 - (x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

[61 FR 34968, July 3, 1996, as amended at 62 FR 28642, May 27, 1997; 62 FR 63875, Dec. 3, 1997; 65 FR 16774, Mar. 29, 2000; 65 FR 77466, Dec. 11, 2000; 67 FR 63232, Oct. 10, 2002; 68 FR 22336, Apr. 28, 2003; 68 FR 49700, Aug. 19, 2003; 69 FR 16178, Mar. 29, 2004]

§ 648.14 Prohibitions.

[Link to an amendment published at 72 FR 11275, Mar. 12, 2007.](#)

(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 Administrator 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 VMS, VMS unit, or VMS signal required to be installed on or transmitted by vessel owners or operators required to use a VMS by this part.
- (8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in §648.7(g).
- (9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Administrator.
- (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 that fished exclusively in state waters, or unless otherwise specified in §648.17.
- (14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Administrator.
- (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 presumptions set forth in §648.75(h).
- (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 Administrator 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 outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.
- (24) Land unshucked surf clams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under §648.70.
- (25) 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;

- (iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.
- (iv) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel; or
- (v) Unless otherwise specified in §648.17.
- (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 Administrator.
- (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, or unless otherwise specified in §648.17.
- (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 areas described in §648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in §648.80(a)(3) and (4), except as provided in §648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in §648.17.
- (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), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in §648.17.
- (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 mesh size specified in §648.80(c)(2), except as provided in §648.80(c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in §648.17.
- (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 in §648.81(b)(2) and (b)(2)(i).
- (40) Enter or be in the area described in §648.81(c)(1) on a fishing vessel, except as allowed under §648.81(c)(2) and (i).
- (41) Fail to comply with the gear-marking requirements of §648.84.
- (42) Fish within the areas described in §648.80(a)(6) with nets of mesh smaller than the minimum size specified in §648.80(a)(3) or (4).
- (43) Violate any of the provisions of §648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Smallmesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in §648.80 constitutes 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)(5).
- (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)(3) or (4), (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 NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in §648.17.
- (48) Violate any provision of the open access permit restrictions as provided in §648.88.
- (49) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§648.80(h) and 648.94.
- (50) Violate any provision of the state waters winter flounder exemption program as provided in §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(d)(1) through (g)(1), except as provided in §648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).
- (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 limits specified in §648.85 or §648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in §648.17, or unless the regulated species are purchased or received from a member of an approved Sector as specified at §648.87 that is exempt from such possession limits in accordance with an approved Sector Operations Plan.
- (56) 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 fished for and harvested by a vessel that has been issued and carries on board a VMS general scallop or limited access scallop permit;
- (ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.
- (iii) The scallops were fished for and harvested by a vessel issued a VMS general scallop permit with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid.
- (57) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport, in excess of 400 lb (181.4 kg) shucked, or 50 bu (17.6 hl) 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 and is fishing under scallop DAS; 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.
- (iii) The scallops were harvested by a vessel that has been issued and carries on board a limited access or General Category scallop permit and the vessel is fishing under the provisions of the state waters exemption program specified in §648.54.
- (58) [Reserved]
- (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, retain, possess, or land more mackerel, squid or butterfish than specified under a notification issued under §648.22.
- (74) Possess nets or netting with mesh not meeting the minimum size requirements of §648.23, and not stowed in accordance with the requirements of §648.23, if in possession of *Loligo* or butterfish harvested in or from the EEZ.
- (75) Transfer *Loligo*, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessels are permitted or have a valid squid/butterfish incidental catch permit and a letter of authorization from the Regional Administrator.
- (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) [Reserved]
- (79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.
- (80) Possess scup in or harvested from the EEZ north of 35°15.3' N. lat. in an area closed, or before or after a season established pursuant to §648.122, or in excess of the possession limit established pursuant to §648.125.
- (81) To purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3' N. lat., or from a vessel issued a scup moratorium permit after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.
- (82) Land scup harvested in or from the EEZ north of 35°15.3' N. lat. after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.
- (83) Possess scup harvested in or from the EEZ north of 35°15.3' N. lat. that do not meet the minimum fish size specified in §648.124.
- (84) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3' N. lat. in excess of the amount specified in §648.123 (500 lb (226.8 kg) or more from November 1– April 30, or 100 lb (45.4 kg) or more from May 1–October 31), unless the vessel meets the gear restrictions in §648.123.
- (85) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3' N. lat. for sale, barter, or trade, after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to §648.4 (a)(6).
- (86) Sell or transfer scup harvested in or from the EEZ north of 35°15.3' N. lat. after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to §648.4(a)(6).
- (87) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3' N. lat. on board a party or charter boat after January 1, 1997, unless the vessel has been issued a valid party or charter boat permit pursuant to §648.4(a)(6)(ii).
- (88) Fish with or possess scup pots or traps in the EEZ north of 35°15.3' N. lat. that have a rectangular escape vent, any side of which is less than 2.25 inches (5.7 cm) in length.
- (89) Fish for, catch, and retain, or land scup in or from the EEZ north of 35°15.3' N. lat. in excess of the landing limit established pursuant to §648.120(b)(3) and (b)(4).
- (90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with §648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in §648.81(f)(2)(ii)), in the areas and for the times specified in §648.80(g)(6)(i) and (ii), except as provided in §§648.80(g)(6)(i) and (ii) and 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.
- (91) Possess in or harvest from the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, black sea bass either in excess of the possession limit established pursuant to §648.145 or before or after the time period established pursuant to §648.142, unless the person is operating a vessel issued a moratorium permit under §648.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended;
- (92) Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3' N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in §648.144(a)(1)(i) (i.e., 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the gear restrictions of §648.144(a).
- (93) Purchase or otherwise receive for commercial purposes black sea bass caught in the EEZ from 35° 15.3' N. lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border, by other than a vessel with a moratorium permit not subject to the possession limit established pursuant to §648.145 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.
- (94) Possess or use rollers used in roller rig or rock hopper trawl gear that do not meet the minimum size requirement of §648.144 if the person

possesses black sea bass harvested in or from the EEZ from 35° 15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(95) Possess or use pot and trap gear not meeting the requirements of §648.144 if the person possesses black sea bass harvested in or from the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of the notification published in the Federal Register stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(97) Fail to comply with any of the provisions specified in §648.56.

(98) Fish, or be in the areas described in §648.81 (j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in §648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in §648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(99) Fish, or be in the areas described in §648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in §648.81 (j)(2), (k)(2), and (l)(2).

(100) Deploy in or fail to remove lobster pot gear from the areas described in §648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in §648.81(j)(2), (k)(2), and (l)(2).

(101) Enter, fail to remove gear from, or be in the areas described in §648.81(g)(1) through (i)(1) during the time period specified, except as provided in §648.81(d), (g)(2), (h)(2), and (i)(2).

(102) Enter or fish in the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Areas, except as provided in §§648.80(a)(3)(vi) and (b)(2)(vi), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with §648.23(b).

(103) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer, other than solely for transport, any Atlantic herring, multispecies, or monkfish, unless the dealer or transferee has a valid dealer permit issued under §648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in §648.81(a) through (f), unless otherwise specified in §648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under §648.85.

(105) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(106) Offload unshucked surf clams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(107) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under §648.70.

(108) Purchase, receive for a commercial purpose other than transport to a testing facility, or process, or attempt to purchase, receive for commercial purpose other than transport to a testing facility, or process, outside Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(109) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the Federal Register notifying participants that Maine mahogany quahog quota is no longer available, unless the vessel is fishing for an individual allocation of ocean quahogs under §648.70.

(110) Fish for sea scallops in, or possess or land sea scallops from, the areas specified in §§648.58 and 648.61.

(111) Transit or be in the areas described in §§648.58 and 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in §648.23(b), unless there is a compelling safety reason to be in such areas.

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in §648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in §648.80(a)(5)(ii) or (a)(9)(ii).

(113) Land ocean quahogs outside Maine that are harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(114) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access permit under §§648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or §648.4(a)(7)(i), and 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).

(115) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or §648.4(a)(7)(i), that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in §648.4(a)(1)(i)(E) and (F).

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in §648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

(117) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(118) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(119) Purchase or otherwise receive, except for transport, spiny dogfish from any person on board a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(120) Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a federally permitted vessel in any state, from Maine to Florida, after the effective date of notification published in the Federal Register stating that the semi-annual quota has been harvested and the EEZ is closed to the harvest of spiny dogfish.

(121) Enter, be on a fishing vessel in, or fail to remove gear from, the EEZ portion of the areas described in §648.81(n) during the time periods specified, except as provided in §648.81(d) and (n)(2).

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in §648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§648.122 and 648.123(a), unless the nets or netting are stowed in accordance with §648.123(b).

(123) Fish for, land, or possess NE multispecies harvested with the use of de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(124) Possess or use de-hookers ("crucifiers") with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(125) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but are not fishing under the limited access monkfish Category A or B provisions as allowed under §648.92(b)(2), call into the DAS program prior to 1 hour before leaving port.

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of §648.82.

(127) [Reserved]

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in §648.85(a)(1), unless in compliance with the

restrictions and conditions specified in §648.85(a)(3).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in §648.85 (a)(1), unless declared into the area in accordance with §648.85(a)(3)(ii).

(130) If declared into one of the areas specified in §648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under §648.85(a)(3)(ii)(A) or (B).

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in §648.85(a), fail to comply with the VMS requirements in §648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in §648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in §648.85(a)(3)(iii).

(133) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in §648.85(a)(1), exceed the trip limits specified in §648.85(a)(3)(iv), unless further restricted under §648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in §648.85(a)(1), if the area is closed under the authority of the Regional Administrator as described in §648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in §648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Pilot Program specified in §648.85(b)(8).

(135) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in §648.85(a)(1), fail to report landings in accordance with §648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in §648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in §648.85(b)(3)(i) through (xi).

(137) Enter or fish in Closed Area II as specified in §648.81(b), unless declared into the area in accordance with §648.85(b)(3)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in §648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in §648.85(b)(3), exceed the number of trips specified under §648.85(b)(3)(vi) or (vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in §648.85(b)(3), exceed the trip limits specified in §648.85(b)(3)(viii).

(141) If declared into the areas specified in §648.85(b), enter or exit the declared areas more than once per trip.

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in §648.85(b)(8)(ii), fail to comply with the VMS requirements in §648.85(b)(8)(v)(B).

(143) If fishing under a NE multispecies DAS, fish in the Eastern U.S./Canada Haddock SAP Pilot Program specified in §648.85(b)(8), unless declared into the program in accordance with §648.85(b)(8) (v)(D).

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in §648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in §648.85(b)(8)(v)(F).

(146) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in §648.85(b)(8)(iii), unless in compliance with the restrictions and conditions specified in §648.85(b)(8)(v)(A) through (I).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in §648.85(a) (1), both outside and inside of the areas specified for a SAP under §648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under §648.85(b)(8)(v)(A) (2) through (4).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP specified in §648.85(b)(8), in the area specified in §648.85(b)(8)(ii), and during the season specified in §648.85(b)(8) (iv), fail to comply with the restrictions specified in §648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in §648.85(a)(1) (ii), and not in a SAP specified in §648.85(b) on the same trip, fail to comply with the requirements specified in §648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in §648.85(a)(1) (ii), and in one of the SAPs specified in §648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in §648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in §648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP specified in §648.85(b)(8), fail to comply with the reporting requirements specified in §648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP specified in §648.85(b)(8), fail to comply with the observer notification requirements specified in §648.85(b)(8)(v)(C).

(153) If fishing under the SNE/MA Winter Flounder SAP, described in §648.85(b)(6), fail to comply with the restrictions and conditions under §648.85(b)(6)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under §648.87, fail to abide by the restrictions specified in §648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under §648.87, fail to remain in the sector for the remainder of the fishing year as required under §648.87(b)(1).

(156) If fishing under an approved Sector, as authorized under §648.87, fish in the NE multispecies DAS program in a given fishing year or, if fishing under a NE multispecies DAS, fish in an approved Sector in a given fishing year, unless otherwise provided under §648.87(b)(1)(xii).

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under §648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in §648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under §648.88(a)(2)(i), or fish with hooks greater than the number specified under §648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(163) Sell or transfer to another person for a commercial purpose, other than solely for transport, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(164) Sell or transfer to another person for a commercial purpose, other than solely for transport, any Atlantic sea scallops harvested from the EEZ by a vessel issued a Federal Atlantic sea scallop permit, unless the transferee has a valid Atlantic sea scallop dealer permit.

(165) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in §648.85(b)(3), the Regular B DAS Pilot Program specified in §648.85(b)(6), or the Eastern U.S./Canada Haddock SAP Pilot Program specified in §648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(166) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies, or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) for, or intended for, human consumption landed by a Category 1 herring vessel as defined in §648.2.

(167) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hr, with the vessel that landed the haddock clearly identified by name.

(168) Sell, purchase, receive, trade, barter, or transfer, or attempt to sell, purchase, receive, trade, barter, or transfer to another person any haddock or other regulated multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a Category 1 herring vessel as defined in §648.2.

(169) While operating an at-sea herring processor, fail to comply with requirements for herring processors/dealers that handle individual fish to separate out and retain all haddock offloaded from a Category 1 herring vessel, and to retain such catch for at least 12 hr after landing, with the

vessel that offloaded the haddock clearly identified by name.

(170) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 43° 00' N. lat., 71° 00' W. long.; (2) 43° 00' N. lat., 69° 00' W. long.; (3) 41° 39' N. lat., 69° 00' W. long.; (4) 41° 39' N. lat., 71° 00' W. long., and then ending at the first point.

(171) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops except for sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 41° 39' N. lat., 71° 00' W. long.; (2) 41° 39' N. lat., 69° 00' W. long.; (3) 40° 00' N. lat., 69° 00' W. long.; (4) 40° 00' N. lat., 71° 00' W. long., and then ending at the first point.

(172) If, upon the end of a fishing trip as specified under §648.10(b)(2)(iii) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under §648.85 or §648.86, as required by §648.86(i).

(173) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with §648.85(a)(3)(ii)(A)(1).

(174) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive DAS counting, trip limits, and reporting requirements that apply, as described in §648.85(a)(3)(ii)(A) and the other applicable area fished.

(175) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under §648.85(a)(3)(ii)(A).

(176) If fishing under the GB Fixed Gear Sector specified under §648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

(177) Fail to comply with the reporting requirements under §648.85(a)(3)(ii)(A)(2) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

(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 owner or operator of a vessel holding a valid multispecies permit, or any person issued an operator's permit or issued a letter under §648.4(a)(1)(i)(M)(3), to do any of the following:

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in §648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of §648.86, unless otherwise specified in §648.17.

(2) [Reserved]

(3) While fishing in the areas specified in §648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under §648.86(g)(1)(ii) or (g)(2)(ii), respectively, unless fishing under the recreational or charter/party regulations, or transiting in accordance with §648.23(b).

(4) If fishing in the areas specified in §648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in §648.81(g)(1)(ii) or (g)(2)(ii), respectively.

(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 owner or operator of a vessel issued a valid limited access NE multispecies permit or letter under §648.4(a)(1)(I), unless otherwise specified in §648.17, 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 NE multispecies specified in §648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to §648.82, unless otherwise exempted under §648.82(b)(5) or §648.89.

(2) For purposes of DAS notification, if required or electing to have a VMS unit under §648.10:

(i) Fail to have a certified, operational, and functioning VMS 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 VMS usage as specified in §648.10(b).

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under §648.82(k) and (l), respectively.

(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 provision of the DAS notification program as specified in §648.10.

(7) Possess or land per trip more than the possession or landing limits specified under §648.86(a), (e), (g), (h), and (j), and under §648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(8) Fail to comply with the restrictions on fishing and gear specified in §648.80(a)(3)(v), (a)(4)(v), (b)(2) (v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in §648.80(a), (b), or (c), unless allowed under §648.85(b)(7)(iv)(F).

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

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in §648.80(g)(6)(i) and (ii), except as provided in §§648.80(g) (6)(i) and 648.81(i).

(11) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with gillnet requirements and restrictions specified in §648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in §648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in §648.82(j)(2).

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS with gillnet gear, fail to comply with gillnet tagging requirements specified in §§648.80 (a)(3)(iv)(B)(4), (a)(3)(iv)(C), (a)(4)(iv)(B)(3), (b)(2)(iv)(B)(3), and (c)(2)(v)(B)(3), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under §648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in §648.80(a)(3)(iv)(C).

(16) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel.

(17) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(18) [Reserved]

(19) Fail to comply with the exemption specifications as described in §648.86(b)(4).

(20) [Reserved]

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by §648.82(j)(1)(ii), using the procedure specified in §648.82(h).

- (22) Fail to comply with the exemption specifications as described in §648.17.
- (23) Fail to declare through VMS its intent to be exempt from the GOM cod trip limit under §648.86(b)(1), as required under §648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under §648.86(b)(1).
- (24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in §648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in §648.86(b)(4).
- (25) For vessels fishing in the NE multispecies DAS program under the provisions of §648.10(c), the call-in system, fail to remain in port for the appropriate time specified in §648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with §648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of §648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under §648.86(b)(1)(ii)(B).
- (26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in §648.86(b)(2)(ii) or (iii).
- (27) Possess or land per trip more than the possession or landing limit specified under §648.86(c).
- (28) Participate in the DAS program pursuant to §648.82 when carrying passengers for hire on board the vessel during any portion of a fishing trip.
- (29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in §648.81(d)(1), (e) (1), (f)(1), and (g)(1) during the time periods specified, except as provided in §648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).
- (30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in §648.81(h)(1)(i) through (vi).
- (31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in §648.81(f)(2)(iii) when fishing in the areas described in §648.81(d)(1) through (f)(1) during the time periods specified in those sections.
- (32) [Reserved]
- (33) For vessels fishing in the NE multispecies DAS program under the provisions of §648.10(c), the call-in system, fail to remain in port for the appropriate time specified in §648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with §648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of §648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under §648.86(b)(2)(ii)(B).
- (34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in §648.82(k).
- (35) Provide false information on the application for NE multispecies DAS leasing, as required under §648.82(k)(3).
- (36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.
- (37) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in §648.82(k)(4)(ix).
- (38) Sub-lease NE multispecies DAS.
- (39) Lease more than the maximum number of DAS allowable under §648.82(k)(4)(iv).
- (40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.
- (41) Lease NE multispecies DAS associated with a Confirmation of Permit History.
- (42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.
- (43) Lease NE multispecies DAS in excess of the duration specified in §648.82(k)(4)(viii).
- (44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under §648.82(l).
- (45) Provide false information on the application for NE multispecies DAS Transfer, as required under §648.82(l)(2).
- (46) Permanently transfer only a portion of a vessels total allocation of DAS.
- (47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in §648.82(l)(1)(ii).
- (48) [Reserved]
- (49) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in §§648.85(b)(3)(xi), 648.85(b)(7)(iv)(H) or 648.85(b)(8)(v)(I).
- (50) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in §648.85(b)(6)(iv)(E).
- (51) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of §648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in §648.85(b)(6)(iv)(D), other groundfish specified under §648.86, or monkfish under §648.94.
- (52) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in §648.82 (d)(2)(i)(A).
- (53) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in §648.85(b)(8)(v) (A).
- (54) [Reserved]
- (55) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of §648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in §648.85(b)(8)(v)(F) or under §648.86.
- (56) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under §648.85(b)(8)(v)(J).
- (57) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the requirements and restrictions specified in §648.85(b)(6)(iv)(A) through (F), (I), and (J).
- (58) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the VMS requirement specified in §648.85(b)(6)(iv)(A).
- (59) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the observer notification requirement specified in §648.85(b)(6)(iv)(B).
- (60) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the VMS declaration requirement specified in §648.85(b)(6)(iv)(C).
- (61) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the landing limits specified in §648.85(b)(6)(iv)(D).
- (62) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in §648.85(b)(6)(iv)(E).
- (63) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in §648.85(b)(6)(iv)(F).
- (64) Use a Regular B DAS in the Regular B DAS Program specified in §648.85(b)(6), if the program has been closed as specified in §648.85(b)(6)(iv)(H) or (b)(6)(vi).
- (65) If fishing in the Regular B DAS Program specified in §648.85(b)(6), use a Regular B DAS after the program has closed, as required under §648.85(b)(6)(iv)(G) or (H).
- (66) If fishing in the Regular B DAS Pilot Program specified in §648.85(b)(6), fail to comply with the reporting requirements specified in §648.85(b)(6)(iv)(I).
- (67) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the requirements and conditions specified in §648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.
- (68) If fishing in the CA I Hook Gear Haddock Access Area specified in §648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in §648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.
- (69) Fish in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), outside of the season specified in §648.85(b)(7)(iii).

- (70) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the DAS use restrictions specified in §648.85(b)(7)(iv)(A), and (b)(7)(v)(A) or (b)(7)(vi)(A), whichever is applicable.
- (71) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the VMS requirements specified in §648.85(b)(7)(iv)(B).
- (72) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the observer notification requirements specified in §648.85(b)(7)(iv)(C).
- (73) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the VMS declaration requirement specified in §648.85(b)(7)(iv)(D).
- (74) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the gear restrictions specified in §648.85(b)(7)(iv)(E), and (b)(7)(v)(B) or (b)(7)(vi)(B), whichever is applicable.
- (75) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the landing limits specified in §648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C), whichever is applicable.
- (76) If fishing in the CA I Hook Gear Haddock SAP specified in §648.85(b)(7), fail to comply with the reporting requirement specified in §648.85(b)(7)(v)(D) or (b)(7)(vi)(D), whichever is applicable.
- (77) Fish in the CA I Hook Gear Haddock Access Area specified in §648.85(b)(7)(ii), if that area is closed as specified in §648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).
- (78) Fish in the Eastern U.S./Canada Haddock SAP specified in §648.85(b)(8), if the SAP is closed as specified in §648.85(b)(8)(v)(K) or (L).
- (79) [Reserved]
- (80) Provide false information on the application to downgrade the DAS Leasing Program baseline, as required under §648.82(k)(4)(xi).
- (81) If fishing in the Regular B DAS Program specified in §648.85(b)(6), fail to use a haddock separator trawl as described under §648.85(a)(3)(iii)(A).
- (82) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under §648.82(e)(2)(i), fail to declare into the area through VMS as required under §648.82(e)(2)(ii).
- (83) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in §648.82(e)(2)(i), and under the restrictions of one or more of the Special Management Programs under §648.85, fail to comply with the most restrictive regulations.
- (84) Fail to comply with the GB yellowtail flounder trip limit specified under §648.85(a)(3)(iv)(C).
- (85) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under §648.85(a)(3)(ii)(A).
- (86) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via VMS that it is electing to fish in this manner, as required by §648.85(a)(3)(ii)(A)(1).
- (87) Possess or land more white hake than allowed under §648.86(e).
- (88) Possess or land more GB winter flounder than allowed under §648.86(j).
- (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 an open access multispecies handgear permit to do any of the following, unless otherwise specified in §648.17:
- (1) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in §648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in §648.89.
 - (2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.
 - (3) Possess or land NE multispecies during the time period specified in §648.88(a)(2).
 - (4) Violate any provision of the open access handgear permit restrictions as provided in §648.88(a).
- (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 scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in §648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in §648.17.
- (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, unless otherwise specified in §648.17, to:
- (1) Fish with gear in violation of the restrictions specified in §648.89(a).
 - (2) Possess cod, haddock, and Atlantic halibut 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).
 - (4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in §648.89(c)(1)(v) or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under §648.89(c)(2)(v).
 - (5) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under §648.89(c)(1) (v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.
 - (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 (17.62 hl) 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 §648.54.
 - (3) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of §648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in §648.10.
 - (4) If the vessel is not subject to VMS requirements specified in §648.10(b), fail to comply with the requirements of the call-in system specified in §648.10(c).
 - (5) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in §648.60(a)(3)(ii).
 - (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)(M).
 - (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 the

possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in §648.51(a)(1).

(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 or use dredge gear that does not comply with the provisions and specifications in §648.51 (b).

(13) Participate in the DAS allocation program with more persons on board the vessel than the number specified in §648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator, or unless participating in the Area Access Program pursuant to the requirements specified in §648.60.

(14) 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.

(15) Fish under the small dredge program specified in §648.51(e) with more than five persons on board the vessel, including the operator, unless otherwise authorized by the Regional Administrator or unless participating in the Area Access Program pursuant to the requirements specified in §648.60.

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

(17) Fail to comply with the notification requirements specified in §648.10(b)(4) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

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

(19) Fail to comply with any requirement for declaring in and out of the DAS allocation program or other notification requirements specified in §648.10.

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

(21) 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).

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

(23) Fail to comply with any of the provisions and specifications of §648.60.

(24) Possess or land more than 50 bu (17.62 hL) of in-shell scallops, as specified in §648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20' N. Lat; or fished in any Sea Scallop Area Access Program specified in §648.60, except as provided in §648.54.

(25) Declare and initiate a trip into or fish in the areas specified in §648.59(b) through (d) after the effective date of the notice in the Federal Register stating that the yellowtail flounder TAC has been harvested as specified in §648.85(c).

(26) Retain yellowtail flounder in the areas specified in §648.59(b) through (d) after the effective date of the notice in the Federal Register stating that the yellowtail flounder TAC has been harvested as specified in §648.85(c).

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in §648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in §648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in §648.60.

(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) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked or 50 bu (17.6 hl) of in-shell scallops.

(2) Fish for, possess, or land scallops on more than one trip per calendar day.

(3) Possess or use dredge gear that does not comply with any of the provisions or specifications in §648.51(b).

(4) Refuse, or fail, to carry an observer after being requested to carry an observer by the Regional Administrator.

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

(6) Fail to comply with the VMS requirements specified in §§648.10 and 648.60.

(7) Fail to comply with the requirements specified in §648.60.

(8) Declare and initiate a trip into the areas specified in §648.59(b) through (d) after the effective date of the notification published in the Federal Register stating that the general category scallop TAC has been harvested as specified in §648.60.

(9) Declare and initiate a trip into the areas specified in §648.59(b) through (d) after the effective date of the notification published in the Federal Register stating that the number of general category trips have been taken as specified in §648.60.

(10) Declare or initiate a trip into areas specified in §648.59(b) through (d) after the effective date of the notification published in the Federal Register stating that the yellowtail flounder TAC has been harvested as specified in §648.85(c).

(11) Fail to comply with any requirement for declaring in and out of the general category scallop fishery or other notification requirements specified in §648.10(b).

(12) Fish for or land per trip, or possess at any time, in excess of 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops unless the vessel has been issued a VMS general scallop permit and has declared into the general category scallop fishery as specified in §648.10(b)(4).

(13) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in §648.60, is carrying an observer as specified in §648.11, and an increase in the possession limit is authorized as specified in §648.60(d)(2).

(14) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in §648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in §648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in §648.60.

(j) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.100(f), it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including a moratorium permit) to do any of the following:

(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.

(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer flounder permit and fishes exclusively in state waters.

(k) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.120(e), it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(1) Possess scup in excess of the threshold amount specified in §648.123, unless the vessel meets the minimum mesh-size restrictions specified in §648.123.

(2) Fail to keep scup separate from other species if fishing with nets having mesh that does not meet the minimum mesh-size restrictions specified in §648.123(a).

(3) Land scup for sale after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.

(4) Possess nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in §648.123(a), unless the nets or netting are stowed in accordance with §648.23(b).

(5) Fish with nets or netting that do not meet the minimum mesh restriction or that are modified, obstructed or constricted while in possession of scup in excess of the threshold amount specified in §648.123.

(6) As of January 1, 1997, sell or transfer to another person for a commercial purpose, other than transport on land, any scup, unless the transferee has a dealer permit issued under §648.6.

(7) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to §648.4(a)(6).

(8) Use a scup pot or trap that does not have the hinges and fasteners made of degradable materials as specified in §648.123.

(9) Use a scup trap or pot that does not have a minimum escape vent of the size specified in §648.123.

(10) Use roller rig trawl gear equipped with rollers greater than the size specified in §648.123.

(11) Possess scup in, or harvested from, the EEZ in an area closed, or before or after a season established pursuant to §648.122.

(12) Use a scup trap or pot that is not marked in accordance with §648.123(b)(3).

(13) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of §648.13(i).

(l) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.120(e), it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat to:

(1) Possess scup in excess of the possession limit established pursuant to §648.125.

(2) Fish for scup other than during a season established pursuant to §648.122.

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

(4) Possess scup that do not meet the minimum fish size specified in §648.124(b).

(m) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.100(f), it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(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 and in paragraph (a) of this section, unless participating in a research activity as described in §648.21(g), it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

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

(2) Possess more than the incidental catch allowance of *Illex* squid unless issued an *Illex* squid moratorium permit.

(3) Take, retain, possess, or land mackerel, squid or butterfish in excess of a possession allowance specified under §648.22.

(4) Take, retain, possess, or land mackerel, squid or butterfish after a total closure specified under §648.22.

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

(6) Transfer squid or butterfish at sea to another vessel unless that other vessel has been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessel is permitted or a valid squid/butterfish incidental catch permit and a letter of authorization by the Regional Administrator.

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

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

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

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower of 3000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to §648.6(a)(2).

(11) Possess 5,000 lb (2.27 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in §648.23(a)(2).

(q) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.21(g), it is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

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

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

(r) [Reserved]

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.1 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.

(t) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any owner

or operator of a vessel issued a valid open access multispecies permit to possess or land any regulated species as defined in §648.2, or to violate any applicable provisions of §648.88, unless otherwise specified in §648.17.

(u) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.140(e), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(1) Fish for, catch, possess, land, or retain black sea bass in excess of the amount specified in §648.144 (a)(1)(i) (i.e. 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the minimum mesh requirement specified in §648.144 (a).

(2) Possess black sea bass in other than a box specified in §648.145(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in §648.144 (a).

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3' N. lat. after the effective date of the notification published in the Federal Register stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(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 §648.144, unless the nets or netting are stowed in accordance with §648.23(b).

(5) Fish with or possess rollers used in roller rig or rock hopper trawl gear that do not meet the requirements specified in §648.144(a)(5).

(6) Fish with or possess pots or traps that do not meet the requirements specified in §648.144(b).

(7) Sell or transfer to another person for a commercial purpose, other than transport on land, any black sea bass, unless the transferee has a valid black sea bass 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 black sea bass moratorium permit.

(9) Possess, retain, or land black sea bass harvested in or from the EEZ in excess of the commercial possession limit established at §648.140.

(10) Land black sea bass for sale in any state south of North Carolina.

(11) Possess black sea bass after the effective date of the notification published in the Federal Register stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Groupers Permit and fishes for and possess black sea bass south of 35°15.3' N. lat.

(v) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.140(e), it is unlawful for the owner and operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess black sea bass in excess of the possession limit established pursuant to §648.145.

(2) Fish for black sea bass other than during a season specified pursuant to §648.142.

(3) Sell black sea bass or transfer black sea bass to another person for a commercial purpose.

(w) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in §648.160(h), it is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at §648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under §648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) 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 solely for transport on land, Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under §648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under §648.4(a)(8)(i).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the Federal Register, pursuant to §648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) 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 an Atlantic bluefish permit issued under §648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the Federal Register pursuant to §648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.

(8) To purchase or otherwise receive for a commercial purpose bluefish harvested by a federally permitted vessel after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.

(x) 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 unless the vessel has a valid Maine mahogany quahog permit issued pursuant to §648.4(a)(4) (i) and is not fishing for an individual allocation under §648.70.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a

valid Maine mahogany quahog permit issued pursuant to §648.4(a)(4)(i) and is not fishing for an individual allocation under §648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surf clam and ocean quahog permit issued under §648.4 and he/she 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) 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 retained or possessed on a vessel issued a permit under §648.4 are deemed to have been harvested in 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, or by a vessel that fished exclusively in the NAFO Regulatory Area. 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, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

- (iii) All small-mesh multispecies retained or possessed on a vessel issued any permit under §648.4 are deemed to have been harvested from the EEZ.
- (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.
- (6) *Scup*. All scup retained or possessed on a vessel issued a permit under §648.4 are deemed to have been harvested in the EEZ.
- (7) *Black sea bass*. All black sea bass retained or possessed on a vessel issued a permit under §648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3' N. lat.
- (8) *Monkfish*. All monkfish retained or possessed on a vessel issued any permit under §648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under §648.17.
- (9) All bluefish possessed on board a party or charter vessel issued a permit under §648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.
- (10) *Atlantic herring*. All Atlantic herring retained or possessed on a vessel issued any permit under §648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.
- (11) *Tilefish*. All tilefish retained or possessed on a vessel issued any permit under §648.4 are deemed to have been harvested in or from the tilefish management unit, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in state waters.
- (12) *Red crab*. All red crab retained or possessed on a vessel issued any permit under §648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.
- (13) *Skates*. All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.
- (y) 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 that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of §648.17:
- (1) Fish for, possess, retain or land monkfish, unless:
 - (i) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under §648.4(a)(9); or
 - (ii) The monkfish were harvested by a vessel not issued a Federal monkfish permit that fishes for or possesses monkfish exclusively in state waters; or
 - (iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing; or
 - (iv) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under §648.17.
 - (2) Land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.
 - (3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under §648.17.
 - (4) Operate or act as an operator of a vessel fishing for, possessing, retaining, or landing monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to §648.5, and this permit is onboard the vessel.
 - (5) Fish with, use, or have on board, while fishing under a monkfish DAS within the Northern Fishery Management Area or Southern Fishery Management Area as described in §648.91(a) and (b), nets with mesh size smaller than the minimum mesh size specified in §648.91(c).
 - (6) Violate any provision of the monkfish incidental catch permit restrictions as provided in §§648.4(a)(9) (ii) or 648.94(c).
 - (7) Fail to comply with the area restrictions applicable to limited access Category G and H vessels specified under §648.92(b)(9).
 - (8) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in §648.94 as is applicable to a vessel issued a monkfish limited access or incidental catch permit.
 - (9) Fail to comply with the monkfish size limit restrictions of §648.93 when issued a valid monkfish permit under §648.4(a)(9).
 - (10) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under §648.94 when issued a valid monkfish permit under §648.4(a)(9).
 - (11) Fail to comply with the monkfish DAS provisions specified at §648.92 when issued a valid limited access monkfish permit, and fishing for, possessing, or landing monkfish in excess of the incidental catch limits specified at §648.94 (c).
 - (12) If carrying a VMS unit under §648.10:
 - (i) Fail to have a certified, operational, and functioning VMS 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 VMS usage as specified in §648.10.
 - (13) Combine, transfer, or consolidate monkfish DAS allocations.
 - (14) Fish for, possess, or land monkfish 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)(9)(i) (E) and (F).
 - (15) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in §648.4(a) (9)(i)(E) and (F).
 - (16) Fail to comply with any provision of the DAS notification program as specified in §648.10.
 - (17) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in §648.92(b)(8).
 - (18) Fail to produce gillnet tags when requested by an authorized officer.
 - (19) Tagging a gillnet with or otherwise using or possessing a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or using or possessing a false gillnet tag.
 - (20) Selling, transferring, or giving away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.
 - (21) Fail to comply with the area declaration requirements specified at §§648.93(b)(2) and 648.94(f) when fishing under a scallop, NE multispecies, or monkfish DAS exclusively in the NFMA under the less restrictive monkfish possession limits of that area.
 - (22) Fail to comply with the area restrictions applicable to limited access G and H vessels specified under §648.92(b)(11).
- (z) *Small-mesh multispecies*. (1) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small-mesh multispecies from one vessel to another in excess of the limits specified in §648.13.
- (2) [Reserved]
- (aa) 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 spiny dogfish permit or issued an operator's permit to do any of the following:
- (1) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, spiny dogfish, unless the dealer or transferee has a dealer permit issued under §648.6(a).

- (2) Fish for or possess spiny dogfish harvested in or from the EEZ after the effective date of the notification published in the Federal Register stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.
- (3) Land spiny dogfish for a commercial purpose after the effective date of the notification published in the Federal Register stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.
- (4) Violate any of the provisions prohibiting finning in §§600.1203 and 600.1204, part 600, subpart N that are applicable to the dogfish fishery.
- (5)–(6) [Reserved]
- (7) Possess more than the possession limit of spiny dogfish specified under §648.235. The possession limit is the maximum amount that may be landed in any 1 calendar day.
- (bb) 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 to do any of the following:
- (1) Fish for, possess, retain or land Atlantic herring, unless:
- (i) The Atlantic herring are being fished for or were harvested in or from the EEZ by a vessel holding a valid Atlantic herring permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or
- (ii) The Atlantic herring were harvested by a vessel not issued an Atlantic herring permit that was fishing exclusively in state waters; or
- (iii) The Atlantic herring were harvested in or from the EEZ by a vessel engaged in recreational fishing; or
- (iv) Unless otherwise specified in accordance with §648.17.
- (2) Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing Atlantic herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.
- (3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, Atlantic herring that were harvested in or from the EEZ, without having been issued, and in possession of, a valid Atlantic herring dealer permit.
- (4) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a processor, or in the capacity of a processor, Atlantic herring from a fishing vessel with an Atlantic herring permit or from a dealer with an Atlantic herring dealer permit, without having been issued, and in possession of, a valid Atlantic herring processor permit.
- (5) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any Atlantic herring, unless the vessel has been issued an Atlantic herring permit, or unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.
- (6) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase, possess or receive, for a commercial purpose, Atlantic herring caught by a vessel without an Atlantic herring permit, unless the Atlantic herring were harvested by a vessel without an Atlantic herring permit that fished exclusively in state waters.
- (7) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell > 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from an area of the EEZ subject to restrictions pursuant to §648.202(a).
- (8) Possess, transfer, receive, or sell, or attempt to transfer, receive, or sell > 2,000 lb (907.2 kg) of Atlantic herring per trip, or land, or attempt to land > 2,000 lb (907.2 kg) of Atlantic herring per day in or from state waters subject to restrictions pursuant to §648.202(a), if the vessel has been issued a valid Atlantic herring permit.
- (9) Transfer or attempt to transfer Atlantic herring to a Canadian transshipment vessel that is permitted in accordance with Pub. L. 104-297 after the amount of herring transshipped equals the amount of the BT specified pursuant to §648.200.
- (10) Transit an area of the EEZ that is subject to a closure to directed fishing for Atlantic herring or restrictions pursuant to §648.202(a) with > 2,000 lb (907.2 kg) of herring on board, unless all fishing gear is stowed as specified by §648.23(b).
- (11) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in §648.203.
- (12) Process Atlantic herring caught in or from the EEZ in excess of the specification of USAP with a U.S. vessel that exceeds the size limits specified in §648.203(b).
- (13) Discard herring carcasses in the EEZ, or at sea if a federally-permitted vessel, after removing the roe.
- (14) Catch, take, or harvest Atlantic herring in or from the EEZ for roe in excess of any allowed limit that may be established pursuant to §648.204(b).
- (15) Catch, take, or harvest Atlantic herring in or from the EEZ, unless equipped with an operable VMS unit if a vessel caught > 500 mt of Atlantic herring in the previous fishing year, or intends to catch > 500 mt of Atlantic herring in the current fishing year, as required by §648.205(a).
- (16) Catch, take, or harvest > 500 mt of Atlantic herring in or from the EEZ during the fishing year, unless equipped with an operable VMS unit as required by §648.205(a).
- (17) Receive Atlantic herring in or from the EEZ solely for transport, unless issued a letter of authorization from the Regional Administrator.
- (18) Fail to comply with any of the requirements of a letter of authorization from the Regional Administrator.
- (19) [Reserved]
- (20) If the vessel has been issued a Category 1 herring permit and is fishing for herring, fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 6 hr prior to landing or crossing the VMS demarcation line on its return trip to port.
- (21)–(23) [Reserved]
- (24) If a Category 1 herring vessel, discard haddock at sea that has been brought on deck or pumped into the hold.
- (25) If fishing with midwater trawl or a purse seine gear, fail to comply with the requirements of §648.80 (d) and (e).
- (26) Transit the GOM/GB Herring Exemption Area when that area is limited to the 2,000 lb (907 kg) limit specified in §648.86(a)(3)(ii)(A)(1) with more than 2,000 lb (907 kg) of herring, unless all the herring on board was caught outside of that area and all fishing gear is stowed and not available for immediate use as required by §648.23 (b).
- (cc) In addition to the general prohibitions specified in §600.725 of this chapter, unless participating in a research activity as described in §648.290(e), it is unlawful for any person owning or operating a vessel to do any of the following:
- (1) Fish for, possess, retain or land tilefish, unless:
- (i) The tilefish are being fished for or were harvested in or from the tilefish management unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel; or
- (ii) The tilefish were harvested by a vessel not issued a tilefish permit that was fishing exclusively in state waters; or
- (iii) The tilefish were harvested in or from the tilefish management unit by a vessel engaged in recreational fishing.
- (2) Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the tilefish management unit, unless the operator has been issued, and is in possession of, a valid operator permit.
- (3) Purchase, possess, receive, or attempt to purchase, possess, or receive, as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the tilefish management unit, without having been issued, and in possession of, a valid tilefish dealer permit.
- (4) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.
- (5) Purchase, possess, or receive, for a commercial purpose, or attempt to purchase, possess, or receive, for a commercial purpose, tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.
- (6) [Reserved]
- (7) Possess tilefish harvested in or from the tilefish management unit in excess of the trip limit, pursuant to §648.292, unless issued a limited access tilefish permit.

(8) Land tilefish harvested in or from the tilefish management unit for sale after the effective date of the notification in the Federal Register, pursuant to §648.291, which notifies permit holders in a limited access category that the quota for that category is no longer available.

(9) Land tilefish in or from the tilefish management unit, in excess of the trip limit pursuant to §648.292, unless the vessel holds a valid limited access tilefish permit.

(dd) 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 to do any of the following:

(1) Catch, possess, transport, land, sell, trade, or barter, any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit or red crab incidental catch permit issued by the Regional Administrator under this subpart.

(2) Land, or possess on board a vessel, greater than the possession or landing limits specified in §648.263.

(3) Fail to comply with the recordkeeping and reporting requirements of §648.7.

(4) Transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab or red crab parts, taken in or from the EEZ portion of the Red Crab Management Unit.

(5) Purchase, possess, or receive greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at §648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit under this subpart.

(6) Purchase, possess, or receive up to 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at §648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(7) Fish for, catch, possess, transport, land, sell, trade, or barter, greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight as specified at §648.263(a)(2)(i) and (ii), per fishing trip, in or from the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit issued by the Regional Administrator under this subpart and fishing under a red crab DAS.

(8) Fail to comply with the provisions of the DAS notification program specified in §§648.262(b)(5) and 648.10, if the vessel has been issued a valid limited access red crab permit.

(9) Fish for, catch, possess, transport, land, sell, trade, or barter, in the Red Crab Management Unit under a red crab DAS if the vessel has declared out of the fishery prior to the start of the fishing year.

(10) Fish for, catch, possess, transport, land, sell, trade, or barter, red crab in excess of landing limits specified in §648.263.

(11) Possess, deploy, fish with, haul, harvest red crab from, or carry on board a vessel in excess of the trap/pot and/or string limit specified at §648.264(a)(2) when fishing under a red crab DAS.

(12) Retain, possess, or land female red crabs in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(13) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(14) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid limited access red crab permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(15) Retain, possess, or land in excess of two claws and eight legs per crab if the vessel has been issued a valid red crab incidental catch permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(16) Fully process red crabs at sea, i.e., any activity that removes meat from any part of a red crab, unless a preponderance of the evidence shows that the vessel fished exclusively in state waters and has not been issued a valid federal permit.

(17) Fail to comply with any gear marking requirement specified at §648.264(a)(5).

(18) Possess, fish, or deploy parlor traps/pots if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(19) Possess, fish, or deploy red crab traps/pots larger than the maximum size specified at §648.263(a)(4), if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(ee) 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 to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of whole skates as bait only less than the maximum size specified at §648.322(b)(2) and in accordance with §648.322(c).

(ff) 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 owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and landing limits for winter skates specified at §648.322, unless holding a letter of authorization to fish for and land skates as bait only at §648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of §648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§648.53, 648.82, and 648.92, for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at §648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at §648.322.

(7) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(gg) 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 owner or operator of a vessel holding a valid Federal permit to do any of the following:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at §648.2.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at §648.80(a)(1)(i). [61 FR 34968, July 3, 1996]

Editorial Note: For Federal Register citations affection §648.14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Effective Date Note: At 71 FR 76948, Dec. 22, 2006, §648.14 was amended by suspending paragraph (i)(1), and by adding paragraphs (h)(27), (i)(13), and (i)(14), effective Dec. 22, 2006 through June 20, 2007.

Effective Date Note: At 72 FR 292, Jan. 4, 2007, §648.14 was amended by adding paragraphs (a) (170) through (171), effective Jan. 1, 2007 through June 30, 2007.

§ 648.15 Facilitation of enforcement.

[Link to an amendment published at 72 FR 11276, Mar. 12, 2007.](#)

(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 Administrator 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.

(4) *Suspension of notification requirements.* The Regional Administrator may suspend notification requirements for vessels fishing under a Maine mahogany quahog permit issued pursuant to §648.4(a) (4)(i) if he determines that such notification is not necessary to enforce effectively the management measures in the Maine mahogany quahog zone. The Regional Administrator may rescind such suspension if he concludes that the original determination is no longer valid. A suspension or rescission of suspension of the notification requirements by the Regional Administrator shall be published in the Federal Register.

(c) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16 when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that receive herring from Category 1 herring vessels, and that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a Category 1 herring vessel. Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hr for dealers and processors on land, and for 12 hr after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Law enforcement officials must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at §648.7.

(e) *Prohibition on discarding haddock by Category 1 herring vessels.* A Category 1 herring vessel may not discard any haddock that has been brought on the deck or pumped into the hold.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 27485, May 19, 1998; 71 FR 46875, Aug. 15, 2006]

§ 648.16 Penalties.

See §600.735.

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Fisheries included under exemption —(1) NE multispecies.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§648.4, 648.80, 648.82 and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(2) *Monkfish.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§648.4, 648.91, 648.92 and 648.94, respectively, while transiting the EEZ with monkfish on board the vessel, or landing monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

(b) *General requirements.* (1) The vessel operator has a valid letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(3) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in §648.23(b); and

(4) The vessel operator complies with the High Seas Fishing Compliance Permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[70 FR 21942, Apr. 28, 2005]

For questions or comments regarding e-CFR editorial content, features, or design, email ecfr@nara.gov.

For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

Section 508 / Accessibility

Last updated: February 19, 2007

Magnuson-Stevens Fishery Conservation and Management Act

SEC. 402. INFORMATION COLLECTION⁷ 16 U.S.C. 1881a

(a) COUNCIL REQUESTS.--If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(b) CONFIDENTIALITY OF INFORMATION.--

(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except--

(A) to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;

(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order;

(D) when such information is used to verify catch under an individual fishing quota program;

(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise

provided for in this subsection, and such release does not violate other requirements of this Act.

(2) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

Administrative Management and Executive Secretariat

NAO 216-100

PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS Eff: 7/18/94; Iss: 7/26/94

SECTION 1. PURPOSE.

. 01 This Order:

a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;

b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;

c. provides for operational safeguards to maintain the security of data; and

d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

. 01 **Access to data** means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.

. 02 **Aggregate or summary form** means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

. 03 **Agreement** refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

. 04 **Assistant Administrator** means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

. 05 **Authorized Use/User.**

a. **Authorized use** is that specific use authorized under the governing statute, regulation, order, contract or agreement.

b. An **authorized user** is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with

respect to confidential data and the penalties for unauthorized use and disclosure.

. 06 **Confidential data** means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

. 07 **Data** refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

. 08 **GC** means the Office of General Counsel, NOAA.

. 09 **Person** means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

. 10 **Public** means any person who is not an authorized user.

. 11 **Region** means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

. 12 **Source document** means the document, paper, or electronic format on which data are originally recorded.

. 13 **State employee** means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

. 14 **Submitter** means any person or the agent of any person who provides data to NMFS either voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

For data subject to this Order, it is NMFS policy that:

a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;

b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and

c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

. 01 The Regional Director of each region (or, in the case of headquarters, each Office

Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

. 02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards:

a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and

b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

. 01 **Data Collection.** To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and

2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.

2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.

3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]

b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:

1. the establishment of an office or person responsible for evaluating requests for access to data;
2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;
3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;
4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;
5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and
6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.

c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:

1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;
2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and
3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

a. **General Requirements.** In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;
2. the relevance of the data to the intended uses;
3. whether access will be continuous, infrequent, or one-time;
4. an evaluation of the requester's statement of why aggregate or nonconfidential summaries of data would not satisfy the requested needs; and
5. the legal framework for the disclosure, in accordance with GC and this Order.

b. **Within NMFS.** NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

c. **Councils.** Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;
2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and
3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. **States.**

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.
2. Each request will be processed in accordance with any agreement NMFS may have with the State:
 - (a) confidential data collected **solely** under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and
 - (b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.
3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.
4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State collected data in its possession if:
 - (a) NMFS has written authorization for data transfer from the head of the collecting State agency; and
 - (b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and
 - (c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. **Contractors.**

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D (Not included --WebEd).

f. **Submitters.** The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A (Not include --WebEd)]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B (Not included -- WebEd).

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a (c),(d),(e),(f),or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 et seq.

b. **South Pacific Tuna Act.** Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. **Other Statutes.** Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 et seq.), and Magnuson Act (16 U.S.C. 1801 et seq.), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

(1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);

(2) Market News Data -- 16 U.S.C. 742(a); and

(3) Seafood Inspection Data -- 7 U.S.C. 1621 et seq.

d. **Special Procedures.**

1. **Cold Storage Summary Reports.** NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. **Surplus commodity purchases by USDA.** NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. **Agreements for Disclosure of Confidential Data.** A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

(a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;

(b) the recipient has been informed in writing of the sensitivity of the data; and

(c) the wording of the agreement has been approved by GC.

. 05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

. 01 **Civil and Criminal.** Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

. 02 **Conflict of Interest.** Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

. 03 **Disciplinary Action.** Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES. None.

A. Quarterly Costs vs. Period Costs
 B. Shutdown Costs
 C. Major-Input Purchases
 4. UPC/API - Contract Sales
 5. UPC/API - Offsetting of Negative Margins
 6. UPC/API - Ministerial Errors
 7. King Pac - Adverse Facts Available
 8. King Pac - Application of Provisional-Measures Cap
 9. Sahachit - G&A Calculation
 [FR Doc. E7-552 Filed 1-16-07; 8:45 am]
 BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Sea Scallops Amendment 10 Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).
ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 19, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ryan Silva, 978-281-9326 or Ryan.Silva@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic sea scallop (scallop) fishery of the Exclusive Economic Zone (EEZ) off the East Coast under the Atlantic Sea Scallop Fishery Management Plan (FMP). The regulations implementing the FMP are at 50 CFR part 648. This collection, Amendment 10, was merged with Framework Adjustments 14, 15, 16, 17 and 18 of the FMP.

Amendment 10 included new access area broken trip notification

requirements and access area trip exchange procedures for limited access vessels participating in the Area Access Program.

Framework Adjustments 14 and 15 required occasional scallop vessels that participate in the Area Access Program to install a vessel monitoring system (VMS) unit.

Framework Adjustment 16 required the installation of VMS units on general category scallop vessels participating in the Area Access Program. These vessels are required to declare an access area trip prior to departure and to report daily catch information while on an access area trip.

Framework Adjustment 17 extended the VMS reporting requirements to include the general category vessels that possess or land more than 40 lbs. of scallop meats. The VMS is required to be fully automatic and operational at all times, unless exempted under the power-down exemption. These vessels are required to declare a trip prior to departure and to report daily catch information while on an access area trip.

Framework Adjustment 18 required vessels taking broken trip compensation trips to enter a unique trip identification code into their VMS units prior to departure.

II. Method of Collection

VMS transmissions, paper applications, telephone calls and/or E-mail are required from participants. Facsimile transmission of paper forms, mail, E-mail, and/or express mail are the methods of information submittal.

III. Data

OMB Number: 0648-0491.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,296.

Estimated Total Responses: 235,998.

Estimated Time Per Response: 2 minutes.

Estimated Total Hours: 7,837.

Estimated Total Annual Cost to Public: \$1,242,440.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 11, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-488 Filed 1-16-07; 8:45 am]

BILLING CODE 3510-22-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Senior Corps Project Progress Report (PPR)—reference OMB Control Number 3045-0033, with an expiration date of August 31, 2007. In conjunction with the PPR renewal, the Corporation proposes to make several modifications:

- Streamline the "Data Demographic" section of the collection instrument to reduce frequency and eliminate redundancy; and
- Modify the PPR datasheet frequency schedule from biennial to annual.

Copies of the information collection requests can be obtained by contacting