

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100902424–1290–02]

RIN 0648–BA23

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement an Omnibus Amendment to all Mid-Atlantic Fishery Management Council (Council) fishery management plans (FMPs) in order to bring all Council FMPs into compliance with the requirements of the Magnuson-Stevens Act (MSA), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which requires establishment of Annual Catch Limits (ACLs) and Accountability Measures (AMs) for stocks not subject to the annual life cycle or other exemptions. There are multiple intended effects of the Omnibus Amendment: To establish a comprehensive framework for all Council FMPs that is compliant with the MSA requirements and consistent with the National Standard 1 guidelines issued by NMFS; to implement a process that more formally utilizes scientific recommendations in the establishment of annual catch levels; to establish a framework to derive ACLs with AM backstops from that scientific advice; and to establish processes for revisiting and modifying the measures that would be established by the respective FMP amendments so that overfishing is prevented, stocks are rebuilt as needed, and Optimum Yield (OY) may be achieved for all managed stocks under the Council's jurisdiction.

DATES: Comments must be received on or before July 18, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–BA23, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- *Fax:* (978) 281–9135.

- *Mail and hand delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Mid-Atlantic ACL/AM Omnibus Amendment Proposed Rule.”

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft Omnibus Amendment document, including the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for the Omnibus Amendment are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The draft Omnibus Amendment, as submitted to NMFS by the Council, is also accessible via the Internet at <http://www.nero.noaa.gov>.

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

SUPPLEMENTARY INFORMATION:**Background**

Congress passed the MSRA in 2006, which was signed into law on January 12, 2007. The MSRA amended the MSA to include new requirements for ACLs and AMs (16 U.S.C. 1853 section 303(a)(15)) and the formal incorporation of scientific advice provided to Regional Fishery Management Councils (RFMCs) from their respective Scientific and Statistical Committees (SSCs) in the establishment of catch levels ((16 U.S.C. 1853 section 302(1)(g)(B)). The inclusion of these new components in the MSA was intended to ensure stock rebuilding, as needed, for stocks subject to overfishing and to ensure all other fish stocks would not become overfished.

National Standard 1 (NS1) of the MSA requires that conservation and management measures “shall prevent overfishing, while achieving, on a

continuing basis, the optimum yield (OY) from each fishery * * *”. NS1 guidelines prepared by NMFS provide definitions and descriptive frameworks for how RFMCs should use Acceptable Biological Catch (ABC) recommendations from their SSCs and how to develop and utilize ACL and AM measures now required under the MSA.

To respond to the MSA requirements and NS1 guidelines, the Council decided to amend the Atlantic Mackerel, Squids, and Butterfish; Atlantic Bluefish; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; the Surfclam and Ocean Quahog; and the Tilefish FMPs in a single, comprehensive action. The Omnibus Amendment development process was envisioned from the onset as a multiple year project given amount of work necessary to develop ABC control rules, ACLs, AMs. The Council conducted public scoping and developed the Omnibus Amendment over the course of 2009 and 2010. The development process included several meetings of the full Council, joint meetings with the Council and Atlantic States Marine Fisheries Commission (Commission), meetings of both the Council's SSC and its scientific uncertainty subcommittee, a subgroup of the full SSC which was formed to develop both ABC control rules and approaches for addressing scientific uncertainty, the Omnibus Amendment Fishery Management Action Team, and four formal public hearings. The Council took final action in August 2010 and NMFS has utilized the interim time between the Council's final action to review, comment, and develop the draft implementing regulations contained in this rule.

NMFS proposes regulations to implement the measures in the Council Omnibus Amendment to establish the following: ABC control rules for use by the SSC in recommending ABC to the Council; a risk policy for use in conjunction with the ABC control rules to inform the SSC of the Council's preferred tolerance for the risk of overfishing a stock; ACLs for all Council-managed stocks except *Loligo* and *Illex* squids, which are exempt from the ACL/AM requirements because they are not overfished and have annual life cycles; comprehensive AMs for all established ACLs; descriptions of the process to review ACL and AM performance; and establishment of processes for the future modification of the measures established through the Omnibus Amendment. The Omnibus Amendment would implement the outlined measures through the following specific FMP amendments: Amendment 13 to the Atlantic

Mackerel, Squids, and Butterfish FMP; Amendment 3 to the Atlantic Bluefish FMP; Amendment 2 to the Spiny Dogfish FMP; Amendment 15 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 16 to the Surfclam and Ocean Quahog FMP; and Amendment 3 to the Tilefish FMP.

A notice of availability (NOA) for the Omnibus Amendment was published on May 23, 2010 (76 FR 29717). As part for the Secretarial review process for FMP amendments, NMFS is soliciting specific feedback on the decision to approve, partially approve, or disapprove the Council's Omnibus Amendment through the NOA. Public comments are being solicited on the amendment through the end of the comment period on July 22, 2011. In addition, NMFS is proposing through this rule, specific measures to implement the Omnibus Amendment and soliciting public input on those specific measures designed to implement the Omnibus Amendment, should it be fully approved by NMFS. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the decision to approve or disapprove the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or this proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment, but may be considered in the development of the final rule. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Proposed Measures

The remainder of this preamble is organized into sections along the same lines as the Council's Omnibus Amendment document: Proposed ABC control rules and risk policy; FMP and species-specific proposed ACLs and AMs; and proposed performance review and future Omnibus Amendment measures.

ABC Control Rules

The Council's proposed ABC control rule framework considers the robustness of the overfishing level (OFL) calculation and associated probability distribution generated by either the

stock assessment or the SSC. The Council has proposed four ABC control rule levels to address the varying amount of scientific uncertainty contained within the stock assessment information and approaches utilized to derive OFL. The control rule levels are generally organized in rank order from the lowest level of scientific uncertainty (*i.e.*, most certain) to most uncertain and/or data poor. The proposed ABC control rules are designed to be used in conjunction with the Council's proposed risk policy described in the next section of this preamble.

The proposed Level 1 ABC control rule represents an ideal assessment. In theory, a Level 1 stock assessment would likely be unbiased and fully consider uncertainty in the precision of estimates. Under the proposed Level 1 control rule, ABC would be determined by the SSC solely on the basis of the probability of overfishing, as informed by the Council's risk policy, and the probability distribution of the OFL.

The proposed ABC control rule for Level 2 assessments has a higher degree of uncertainty than does Level 1. Level 2 assessments are distinguished from Level 1 in that some key features of the stock biology, fisheries that exploit it, or data collection methods are missing from the assessment and, thus, introduce some level of uncertainty to the assessment information. The ABC in Level 2 assessments will be determined by the Council's risk policy, and the OFL probability distribution will be based on the specified distribution in the stock assessment.

The proposed ABC control rule approach for Level 3 assessments is the same as Level 2 except that the assessment does not contain estimates of the OFL probability distribution or, in the opinion of the SSC, the assessment-provided distribution does not adequately reflect uncertainty in the OFL estimate. Assessments in this level are judged by the SSC to over- or underestimate the accuracy of the OFL, and the SSC would adjust the OFL distribution to develop an ABC by using the Council's risk policy or applying a default control rule of 75 percent of the fishing mortality rate (F) at maximum sustainable yield (F_{MSY}) as the ABC if an acceptable OFL distribution cannot be developed by the SSC.

The ABC control rule approach for Level 4 assessments, the lowest level of proposed categorization, does not have point estimates of OFL, or else the OFL distributions are not considered reliable

by the SSC. Stocks that are highly uncertain or that fail peer review would fall into the Level 4 category. Stocks in Level 4 may only have a reliable estimate of abundance trend and catch, but may have missing or unreliable absolute abundance, estimates of F , and/or biological reference points. Stocks assigned to Level 4 would have ABC derived by the SSC using case-by-case approaches based on biomass, catch history, and the Council's risk policy.

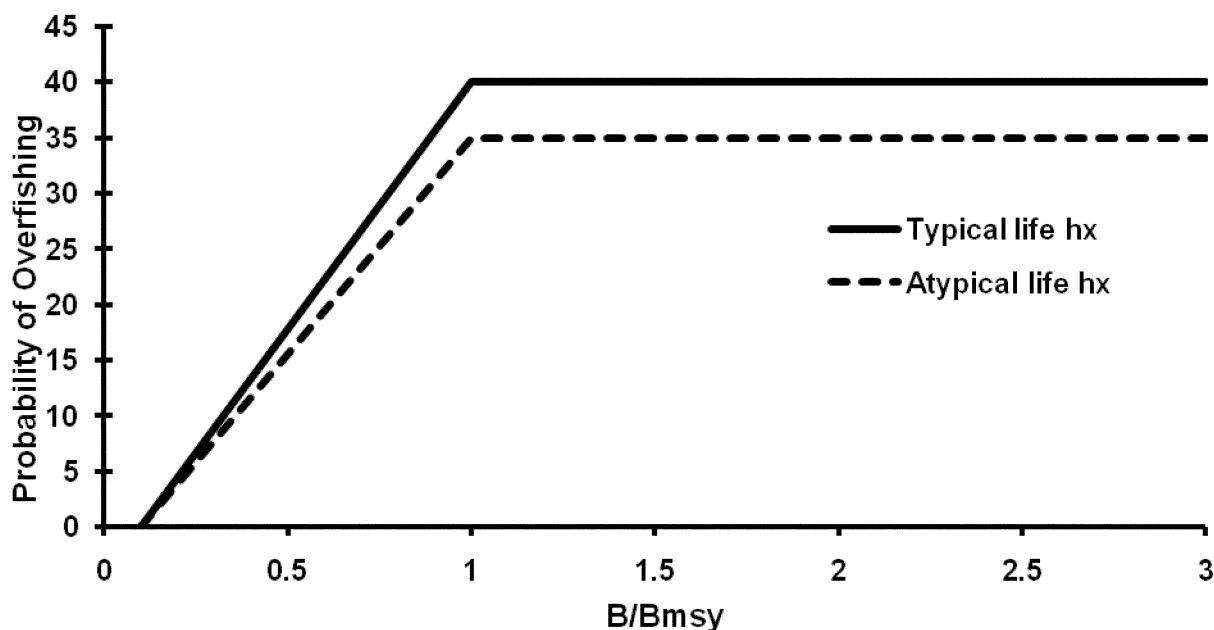
The Council has acknowledged that the SSC may deviate from the control rule framework or level criteria to recommend an ABC to the Council, but must provide adequate justification for so doing, including why the alternative approach applied is consistent with the best available scientific information.

Council Risk Policy

The Council's proposed risk policy is designed to inform the SSC of the Council's tolerance for the risk of overfishing. The Council's preferred risk policy would be used in conjunction with the ABC control rule framework when the SSC makes ABC recommendations. When an OFL distribution is available and considered reliable by the SSC, the applicable tolerance for overfishing risk, as informed by the risk policy, would be selected from the distribution to derive the ABC recommendation.

The Council's recommended risk policy considers whether the life history of the species in question is typical or atypical, as determined by the SSC, and uses the current stock replenishment threshold defined as the ratio of biomass (B)/ B_{MSY} to identify the probability of overfishing the stock (see Figure 1). The probability of overfishing would be set at zero when the B/B_{MSY} ratio is less than or equal to 0.10; this was identified by the Council as a preventative measure to ensure that biomass for a given stock does not fall to a very low level from which recovery is more difficult. It should be noted that setting the probability of overfishing at zero does not necessarily equate to a prohibition on catch or even landings. The probability of overfishing increases linearly from zero when the B/B_{MSY} ratio is 0.10 until the ratio of $B/B_{MSY} = 1.0$. For all B/B_{MSY} ratio values greater than or equal to 1.0, the probability of overfishing the stock becomes constant at 40 percent for species with a typical life history, and 35 percent for species with an atypical life history.

Figure 1. Council's Proposed Overfishing Risk Policy.



For stocks under a rebuilding plan, the risk policy would require that the probability of exceeding the rebuilding target F (F_{REBUILD}) would be at least 50 percent, unless modified to a lesser value (*i.e.*, a higher probability that F_{REBUILD} would not be exceeded) through a stock rebuilding plan amendment. The Council has indicated that the SSC will be expected to forward as its ABC recommendation the lower ABC resulting from the two possible calculation methods where applying the risk policy to the rebuilding F probability and OFL probability approaches results in different potential ABCs.

If no OFL is available from a stock assessment and no OFL proxy is provided by the SSC when an ABC recommendation is made, the Council's preferred risk policy would not permit increases in ABC until an acceptable OFL has been identified. This aspect of the risk policy is designed to prevent catch from increasing when there are no available criteria with which to determine whether overfishing will occur for the upcoming fishing year.

Annual Catch Limits and Accountability Measures

General Information. The Council's proposed process would generally rely on the SSC to set ABC at or below OFL, with the reduction from OFL dependent on the amount of scientific uncertainty

identified by the SSC. ACLs would be set equal to ABC for all species; however, some species would have sector-level ACLs for commercial and recreational fisheries whose sum would equal the total ABC. These sector ACLs would be based on pre-existing allocations in FMPs. The Council proposes Annual Catch Targets (ACTs) as the primary means of addressing management uncertainty. Council staff or species-specific monitoring committees would review available information and recommend to the Council the amount of reduction from ACL to ACT necessary to address management uncertainty. Where ACLs are divided into sector-specific ACLs, comparable sector ACTs would be utilized that address the associated sector-specific management uncertainties. Estimated discards (*i.e.*, dead discarded catch) would be removed from ACTs to yield either commercial or recreational landing targets, as applicable. In summary, the Council's proposed structure for all FMPs is: $\text{OFL} \geq \text{ABC} = \text{ACL(s)} > \text{ACT(s)}$, with scientific uncertainty addressed at the ABC level by the SSC as an offset from OFL, and management uncertainty addressed by the Council following recommendations from Council staff or species-specific monitoring committees at the ACT level as an offset from the ABC/ACL level.

Many existing proactive AMs in the FMPs will be retained in the Council's proposed approaches. These include adjustments to commercial trip and/or possession limits when landings reach specified levels, and prohibition on retention and landing when commercial quotas are reached. New proactive AMs are being proposed to close recreational fisheries when landings data indicate that target landing levels have been met. The Council has clarified that recreational closures would be based only on "data in hand," and that projection or forecasting of future landings would not be utilized to predict when the recreational target will be met or exceeded. Thus, recreational fishery closures would only occur if landings data indicate that the target level has already been met or exceeded.

The Council has proposed that lb-for-lb repayment of any catch above the established ACLs to be utilized in all fisheries as the primary reactive AM. Because total stock mortality that must be accounted for under ACLs is comprised of both landings and dead discards (*i.e.*, total catch), the Council has, for some species, proposed slightly different AMs dependent on whether discards, landings, or some combination of both has caused an ACL to be exceeded. It is expected that when changes in dead discard mortality estimates cause ACLs to be exceeded, subsequent year measures would both

evoke the lb-for-lb repayment provisions in reactive AMs and will result in modification of the management uncertainty buffer utilized to establish ACTs. The Council may consider numerous corrective actions if ACTs are exceeded but ACLs are not (e.g., changes to landing or possession limits). In addition, for most recreational sector ACLs the comparison of catch would use a 3-year rolling average to evaluate catch performance. Because the final landings and discard data for both commercial and recreational fisheries are not expected to be available in a timely enough manner to implement reactive AM measures in the fishing year immediately following an ACL overage, it is expected that the lb-for-lb repayment would occur 1 year removed from when the ACL was exceeded (i.e., fishing year +1). Adjustments for ACL overages would be handled through the Council's specification processes and would not be evoked during an ongoing fishing season if the information to determine that an ACL has been exceeded becomes available mid-fishing year.

Atlantic Mackerel. The Council took final action on Amendment 11 to the Atlantic Mackerel, Squids, and Butterfish FMP in October 2010, which may, among other things, establish a recreational fishery allocation for mackerel. The Omnibus Amendment was developed with two potential Atlantic mackerel options to respond to the recreational allocation measures being considered under Amendment 11.

Under both Atlantic mackerel scenarios, the Council is proposing that ACL be set equal to ABC. The Atlantic Mackerel Monitoring Committee would recommend any necessary management uncertainty reduction required to offset ACL from either a fishery-level ACT or sector level ACTs, dependent on the status of Amendment 11. Estimated discards would be removed from the ACT or ACTs to yield the Domestic Annual Harvest (DAH) for the commercial fishery and either a formal Recreational Harvest Limit or 15,000-mt recreational allocation dependent on if the measures in Amendment 11 are developed and implemented.

The Council is proposing a proactive AM of general inseason closure authority for the recreational fishery when data in hand indicate that the recreational target has been reached or exceeded. If a recreational allocation is established in Amendment 11, reactive AMs would require lb-for-lb repayment of ACL overages within the respective sector level: At the DAH for commercial landing-induced overages; at the recreational harvest limit, for

recreational landing based overages; and at the respective ACT level if the overage was not the result of sector-specific landings (i.e., dead discards, research set-asides).

If a recreational allocation is not established by Amendment 11, or that component of Amendment 11 is disapproved by NMFS, all reactive accountability would occur at the ACL, with lb-for-lb reduction of the ACL in a subsequent fishing year, regardless of the cause (i.e., both landing and dead discard-induced overages would result in ACL reduction).

Butterfish. The Council's proposed structure for the butterfish fishery would set ABC = ACL and use an ACT as an offset to account for management uncertainty. The Council's Butterfish Monitoring Committee would be responsible for recommending the buffer amount for management uncertainty between the ACL and ACT.

Existing proactive AMs would be retained for the butterfish fishery. Specifically, when 80 percent of the DAH is reached, the directed fishery would be closed and an incidental catch limit implemented.

If the ACL is exceeded, lb-for-lb repayment of the overage, regardless if caused by directed landings or estimated dead discards, would occur as soon as is practicable in a subsequent fishing year.

Atlantic Bluefish. The Council's proposed approach for bluefish would establish a fishery-level ACL equal to ABC, with commercial and recreational sector ACTs. Existing provisions in the Bluefish FMP allow a transfer of catch from the recreational allocation to the commercial fishery; thus, the Council has proposed a fishery-level ACL. The Council's Bluefish Monitoring Committee would recommend the level of management uncertainty necessary to offset the sector ACTs from the ACL.

Existing lb-for-lb repayment of individual state commercial quota overages would continue, irrespective of whether the ACL is exceeded. If the ACL is exceeded and no transfer occurred between the recreational and commercial sectors and the recreational fishery is adjudged to have caused the ACL overage, then the recreational sector ACT would repay the overage lb-for-lb as soon as practicable in a future specification setting process. If the ACL is exceeded in a year when a transfer does occur between sectors, the fishery-level ACL would be reduced by the amount of the overage in a subsequent fishing year, and the amount of transfer between the recreational and commercial sectors would also be reduced by the magnitude of the

overage. These adjustments would deal with any landings-based overage of the ACL; if estimated dead discards are responsible for the ACL being exceeded, the fishery-level ACL would be reduced (i.e., lb-for-lb repayment) and no modification to the transfer between sectors would be made. Because the ACL for bluefish is at the fishery level, and no sub-ACL is recommended for the recreational fishery, the Council is not proposing a 3-year rolling average for assessing the performance of the bluefish fishery relative to the ACL. Instead, a year-by-year comparison would be used. In addition, because bluefish are jointly managed with the Commission, the Council is proposing an AM that would seek to reconvene the Commission's Bluefish Management Board and the Council if established total catch or landing levels are different for state and Federal waters. This provision would have to be jointly adopted by both the Commission and implemented in the Federal FMP to become effective. The intention of this provision is to ensure that catch and landing levels remain as consistent as practicable for both state and Federal waters.

The Council also proposes that a multi-year specifications process be added to the Bluefish FMP, so that annual catch levels may be established for up to 3 years at a time. This would ensure that all Council FMPs have provisions to permit specifications to be established for up to 3 years at a time.

Spiny Dogfish. The spiny dogfish stock spans both U.S. and Canadian waters, and the FMP requires that consideration be given to the amount of spiny dogfish taken in Canada. To accommodate this provision, the Council is proposing that the SSC recommend a stock-level ABC that considers stock-level scientific uncertainty necessary to reduce from OFL. The estimated Canadian catch would be removed from the ABC, resulting in the Domestic ABC, which would in turn be set equal to the U.S. ACL. The Council's Dogfish Monitoring Committee would recommend any necessary management uncertainty reduction needed to reduce catch from the U.S. ACL to the ACT, thus providing a low probability of exceeding the U.S. ACL. Estimated domestic discard mortality would be removed from the ACT to provide the Total Allowable Landings (TAL) for the commercial fishery.

The Council does not propose changes to the existing proactive AMs that permit Federal trip limits to be established though the specifications process and mechanism to close the

Exclusive Economic Zone (EEZ) when semi-annual commercial landings quotas are reached. The Council is proposing that lb-for-lb repayment of any ACL overage be implemented as the sole reactive AM for the spiny dogfish fishery.

Summer Flounder. The Council proposes that separate commercial and recreational sector ACLs be established for summer flounder, the sum of which would total the ABC. Sector-specific management uncertainty would be identified by the Summer Flounder Monitoring Committee to establish sector-specific ACTs below the sector ACLs. Estimated discard mortality and research set-aside would be removed from the ACTs to yield the recreational harvest limit and commercial quotas, respectively, with the commercial quota further subdivided into state quotas. Both sector and state allocations would remain unchanged from those currently specified in the FMP.

Existing commercial fishery closure and state-by-state overage repayment provisions would remain in the FMP as AM measures. State commercial overage repayment would occur irrespective of whether or not the ACL is exceeded. The Council is proposing general inseason closure authority for the recreational sector, to be implemented if available data indicate that the recreational harvest limit has already been met or exceeded (*i.e.*, data would not be used to project attainment of the recreational harvest limit). In instances where the sector-specific ACL is exceeded, the applicable ACL would be reduced through lb-for-lb overage repayment for a future fishing year through the specifications process. The recreational sector ACL would utilize a 3-year moving average to evaluate performance of the sector. The moving average would be phased in over a period of 3 years: In year one, catch (sum of recreational sector specific landings and dead discards) would be compared to the prior year catch; in year two, an average catch of years one and two would be used; in year three and in all subsequent years, the average catch from the prior three years would be used.

Similar to other jointly-managed species, the Council proposes that language be adopted by the Commission and added to the Federal FMP to ensure that catch levels are consistent in both state and Federal waters to avoid differential effects on Federal permit holders.

Scup. The proposed measures for scup would be essentially the same as those proposed for summer flounder, except that the commercial quota would

be allocated into three existing quota periods instead of to individual states. All other provisions would function the same as outlined for summer flounder: Sector-specific ACLs; management uncertainty considerations developed by a scup-specific monitoring committee; and sector-specific ACTs. Commercial quota period overages would continue to have lb-for-lb repayment, consistent with the current FMP provisions, regardless of whether the sector ACL is exceeded. Recreational AMs would be evaluated using the same 3-year average approach described for summer flounder. The joint-management provisions between the Commission and Council also apply for scup.

Black Sea Bass. The proposed measures for black sea bass would be the same as those developed for summer flounder and scup, except that the commercial quota would be administered on a coastwide basis for the fishing year, and lb-for-lb repayment of a commercial landings overage would also occur at the coastwide level, irrespective of whether the commercial-sector ACL is exceeded. All other provisions would function the same as outlined for summer flounder and scup.

Atlantic Surf Clam. The Council's proposed system for surfclams would set $ACL = ABC = \text{Total Allowable Catch (TAC)}$. An ACT set below TAC would be recommended by Council staff to address management uncertainty. Existing Individual Transferable Quota (ITQ) accountability requires lb-for-lb repayment of any permit-specific landing overages. This would be retained as the sole AM for the surfclam fishery.

Ocean Quahog. The Council's proposed measures for ocean quahog would set $ACL = ABC$, with Council staff recommending any necessary management uncertainty reductions to yield separate ACTs for the Maine mahogany quahog fishery and the non-Maine fishery as subdivisions below the ACL. Similar to surf clams, 100 percent of ITQ landing overages that occur within the fishery are required to be repaid lb-for-lb. This would remain in place as the non-Maine fishery AM, regardless of whether the ACL is exceeded. If the ACL is exceeded and harvest in the Maine fishery is the cause, the Maine ACT would be adjusted in a following year through a bushel-for-bushel repayment of the overage.

Tilefish. The Council has proposed that $ACL = ABC$ for tilefish, and that the Tilefish Monitoring Committee would recommend any necessary management uncertainty reduction from ACL to ACT.

An estimate of dead discards would be removed from the ACT to produce the Total Allowable Landings (TAL). The existing regulatory structure would continue to allocate 95 percent of the commercially available landings to the Individual Fishing Quota (IFQ) permit holders, and 5 percent would be reserved for incidental catch.

Inseason closure authority already exists for the incidental category to be closed when projected landings total the specified category target. The Council has proposed increasing the incidental trip limit from 300 to 500 lb (136 to 227 kg) based on analyses conducted during development of the Omnibus Amendment. If the incidental category exceeds the 5-percent allocation in any given year, the incidental 500-lb (227-kg) trip limit may be reduced in subsequent fishing years.

The Tilefish FMP already contains lb-for-lb landing overage repayment requirements for IFQ permit holders. This authority would be retained as the primary AM for the commercial fishery. If the incidental category is responsible for an ACL overage, the 5-percent allocation would be reduced lb-for-lb in a subsequent year, and the incidental category trip limit may be adjusted as well. If the ACL is exceeded by any other means (*i.e.*, changes in estimated dead discard amounts), lb-for-lb repayment of the overage from a subsequent fishing year ACL would be enacted prior to any IFQ and incidental permit category allocation calculations.

Future Review and Modification of Omnibus Amendment Implemented Processes

The Council has proposed that ABC control rules be reviewed in detail by the SSC 5 years after the implementation of the Omnibus Amendment measures and at least every 5 years thereafter. Reviews can occur more frequently than 5 years, based on the need to address rebuilding plans, overfished stocks, poor control rule performance resulting in overfishing, or other relevant factors. The Council specified that the process to change any ABC control rules would be consistent with the magnitude of the potential changes: For example, minor changes within the existing four levels based on assessment levels could be developed through the Council's specification or framework adjustment process. Addition of new control rule levels or substantial modification of existing criteria within the four levels may require a full FMP amendment.

The Council has proposed that ACL and AM performance reviews occur at least every 5 years, as well, if ACLs are

not routinely exceeded. Consistent with the NS1 guidelines, if the ACL is exceeded for any species with a frequency greater than 25 percent of the time (*i.e.*, more than 1 in 4 years, or in any 2 consecutive years), the Council has proposed to initiate a review of the ACL, ACT, and AM approaches used.

The Council has included in the Omnibus Amendment a comprehensive listing of items that may be modified through specification or a framework adjustment in an effort to preserve a responsive, adaptive process. The limits to modifications of the ABC control rules, risk policy, ACT control rules, AMs, and actions that may be taken under each FMP are provided. In addition, several items are identified that can only be modified through framework adjustment or FMP amendment.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squids; and Butterfish FMP; Atlantic Bluefish FMP; Spiny Dogfish FMP; Summer Flounder, Scup, and Black Sea Bass FMP; Surfclam and Ocean Quahog FMP; and Tilefish FMP; other provisions of the MSA; and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

As outlined in the preamble to this proposed rule, the Omnibus Amendment proposes multiple descriptive processes for Council-managed resources: To implement methods of establishing ABC through control rules; establishment of a Council risk policy for the tolerance of overfishing stocks, a required element of ABC control rules; to establish as framework for specifying ACLs derived from ABC with a comprehensive system of AMs; and to provide a description of the future evaluation and modification processes for the ABC control rules, Council risk policy, ACLs, and AMs. The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of the Omnibus Amendment measures in conjunction with the EA analyses. The formal procedures for addressing both

scientific and management uncertainty in the catch limit establishment system proposed by the Omnibus Amendment are administrative, as they are entirely a description of process. While the Omnibus Amendment provides detailed descriptions of the frameworks for how scientific and management uncertainty will be considered, as well as how ACLs and AMs would function, the action contains no actual application of the methods to set ABC, apply the risk policy, or establish specific ACLs or AMs for any of the Council's FMPs. As a result, there are no immediate economic impacts to evaluate. Populating the proposed framework with data, which would result in the establishment of catch levels with measurable impacts, will occur in future actions. As the systems proposed by the Omnibus Amendment are utilized in future actions, the specific impacts resulting from the application of the systems will be evaluated through the Council's specification processes for each FMP.

The Council-conducted analyses identified 3,911 unique fishing entities in the Northeast Region, all but 6 of which were determined to be small entities. However, given the administrative aspects of the proposed measures, there are neither expected direct economic or disproportionate impacts to either small or large regulated entities given the aforementioned description of the administrative processes proposed by the Omnibus Amendment. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. RFA analysis will be conducted, as appropriate, for subsequent actions taken under the Omnibus Amendment established procedures.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 3, 2011.

Eric C. Schwaab,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. Section 648.14(u)(2)(vii) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *
(2) * * *

(vii) Land or possess tilefish in or from the Tilefish Management Unit, on a vessel issued a valid tilefish permit under this part, after the incidental fishery is closed pursuant to § 648.245(b), unless fishing under a valid tilefish IFQ allocation permit as specified in § 648.249(a), or engaged in recreational fishing.

* * * * *

3. Section 648.20 is revised to read as follows:

§ 648.20 Mid-Atlantic Fishery Management Council ABC Control Rules.

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

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

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

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

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

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

(v) No substantial retrospective patterns exist in the stock assessment

estimates of fishing mortality, biomass, and recruitment.

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

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

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

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

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

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

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

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

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

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

(ii) If the SSC cannot develop an OFL distribution, a default control rule of 75

percent of the F_{MSY} value will be applied to derive ABC.

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

(2) *Level 4 ABC determination.* Stocks assigned to Level 4 will have ABC derived using control rules developed on a case-by-case basis by the SSC based on biomass and catch history and application of the MAFMC's risk policy found in § 648.21(a) through (d).

4. Section 648.21 is revised to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council Risk Policy.

The risk policy shall be used by the SSC in conjunction with the ABC control rules in § 648.20(a) through (d) to ensure the MAFMC's preferred tolerance for the risk of overfishing is addressed in the ABC development and recommendation process.

(a) *Stocks under a rebuilding plan.* The probability of not exceeding the F necessary to rebuild the stock within the specified time frame (rebuilding F or $F_{REBUILD}$) must be at least 50 percent, unless the default level is modified to a higher probability for not exceeding the rebuilding F through the formal stock rebuilding plan. A higher probability of not exceeding the rebuilding F would be expressed as a value greater than 50 percent (e.g., 75-percent probability of not exceeding rebuilding F , which corresponds to a 25-percent probability of exceeding rebuilding F).

(b) *Stocks not subject to a rebuilding plan.* (1) For stocks determined by the SSC to have an atypical life history, the maximum probability of overfishing as informed by the OFL distribution will be 35 percent for stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or higher (i.e., the stock is at B_{MSY} or higher). The maximum probability of overfishing shall decrease linearly from the maximum value of 35 percent as the B/B_{MSY} ratio becomes less than 1.0 (i.e., the stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. An atypical life history is generally defined as one that has greater vulnerability to exploitation and whose characteristics have not been fully addressed through the stock assessment and biological reference point development process.

(2) For stocks determined by the SSC to have a typical life history, the maximum probability of overfishing as informed by the OFL distribution will be 40 percent for stocks with a ratio of B to B_{MSY} of 1.0 or higher (i.e., the stock is at B_{MSY} or higher). The maximum

probability of overfishing shall decrease linearly from the maximum value of 40 percent as the B/B_{MSY} ratio becomes less than 1.0 (stock biomass less than B_{MSY}) until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10. Stocks with typical life history are those not meeting the criteria in paragraph (b)(1) of this section.

(c) For instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(d) If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified.

5. Section 648.22 is revised to read as follows:

§ 648.22 Specifications.

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

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

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

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

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

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid, as specified in paragraph (e) of this section.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review the best available data to recommend specifications consistent with the following:

(1) *Loligo and/or Illex squid.* (i) The ABC for any fishing year must be either the maximum OY, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY. The OYs specified during a fishing year may not exceed the following amounts:

(A) *Loligo.*—The catch associated with a fishing mortality rate of $F_{\text{Threshold}}$.

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

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

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

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

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

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

(A) *Commercial sector ACT.* Commercial ACT is composed of RSA, DAH, dead discards, and TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RSA, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and

for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. Economic considerations for the establishment of JVP and TALFF include:

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

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

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

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

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

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

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

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

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

(B) *Recreational sector ACT.*

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

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

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

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

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

(3) *Butterfish.*—(i) *ABC.* The MAFMC's SSC shall recommend an ABC to the MAFMC, as described in § 648.20. The butterfish ABC is reduced from the OFL

based on an adjustment for scientific uncertainty; the ABC must be less than or equal to the OFL.

(ii) *ACL.* The butterfish ACL will be set equal to the butterfish ABC.

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

(iv) *ACT.* The Monitoring Committee shall identify and review relevant sources of management uncertainty to recommend the butterfish ACT as part of the specifications process. The ACT is composed of RSA, DAH, dead discards, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RSA will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RSA, if applicable.

(v) The butterfish mortality cap will be allocated to the *Loligo* fishery as follows: Trimester I—65 percent; Trimester II—3.3 percent; and Trimester III—31.7 percent.

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

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

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

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

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

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

(C) The ACT for butterfish.

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

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

(4) Commercial minimum fish sizes.
 (5) Commercial trip limits.
 (6) Commercial seasonal quotas/closures for *Loligo* and *Illex*.
 (7) Minimum mesh sizes.
 (8) Commercial gear restrictions.
 (9) Recreational harvest limit, set after reductions for research quotas.
 (10) Recreational minimum fish size.
 (11) Recreational possession limits.
 (12) Recreational season.
 (13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

(14) Modification of existing accountability measures (AMs) utilized by the Monitoring Committee.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish a proposed rule in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be

superseded as of the effective date of the final rule implementing the current year's annual specifications.

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

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the **Federal Register**.

(f) *Distribution of annual Loligo squid commercial quota.* (1) A commercial quota for *Loligo* squid will be allocated annually into trimester periods, based on the following percentages: Trimester I (January–April)—43.0 percent; Trimester II (May–August)—17.0 percent; and Trimester III (September–December)—40.0 percent.

(2) Any underages of commercial period quota for Trimester I that are greater than 25 percent of the Trimester I quota will be reallocated to Trimesters II and III of the same year. The reallocation of quota from Trimester I to Trimester II is limited, such that the Trimester II quota may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of commercial period quota for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

(g) *Research set-aside (RSA) quota.* Prior to the MAFMC's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the MAFMC.

(2) NMFS will convene a review panel, including the MAFMC's Comprehensive Management Committee and technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, and provide final approval of the projects. The Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips must be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the MAFMC; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the MAFMC, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.12(b).

6. Section 648.23 is revised to read as follows:

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.*

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

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

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

(i) *Net obstruction or constriction.* Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 2 1/8 inches (54 mm) during Trimesters I (Jan–Apr) and III (Sept–Dec), or 1 7/8 inches (48 mm) during Trimester II (May–Aug), diamond mesh, inside stretch measure. “Top of the regulated

portion of the net” means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 5 inches (12.7 cm) diamond mesh, inside stretch measure. For the purposes of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

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

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

(4) *Mackerel, squid, and butterfish bottom trawling restricted areas.* (i) *Oceanographer Canyon.* No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the

Oceanographer Canyon or be in the Oceanographer Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Oceanographer Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

OCEANOGRAPHER CANYON

| Point | N. Lat. | W. Long. |
|-----------|----------|----------|
| OC1 | 40°10.0' | 68°12.0' |
| OC2 | 40°24.0' | 68°09.0' |
| OC3 | 40°24.0' | 68°08.0' |
| OC4 | 40°10.0' | 67°59.0' |
| OC1 | 40°10.0' | 68°12.0' |

(ii) *Lydonia Canyon.* No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Lydonia Canyon or be in the Lydonia Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Lydonia Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

LYDONIA CANYON

| Point | N. Lat. | W. Long. |
|-----------|----------|----------|
| LC1 | 40°16.0' | 67°34.0' |
| LC2 | 40°16.0' | 67°42.0' |
| LC3 | 40°20.0' | 67°43.0' |
| LC4 | 40°27.0' | 67°40.0' |
| LC5 | 40°27.0' | 67°38.0' |
| LC1 | 40°16.0' | 67°34.0' |

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

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

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

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

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

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

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

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

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

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

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.*

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

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

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

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

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

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

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

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

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

10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthened). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

7. Section 648.24 is revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

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

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

(ii) *[Reserved]*

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

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

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

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

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

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

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

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

(2) *Butterfish ACL overage repayment.* If the butterfish ACL is exceeded, then catch in excess of the ACL will be deducted from the ACL the following year, as a single-year adjustment.

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

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

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

8. Section 648.25 is revised to read as follows:

§ 648.25 Framework adjustments to management measures.

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

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible

quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs); any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification. Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

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

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

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

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

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

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

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

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

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

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

(b) *[Reserved]*

9. Section 648.26 is revised to read as follows:

§ 648.26 Possession restrictions.

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

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

(1.13 mt) of *Loligo* per trip at any time and may only land *Loligo* once on any calendar day.

(c) *Illex*. During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

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

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

10. Section 648.27 is added to read as follows:

§ 648.27 Observer requirements for the *Loligo* fishery.

(a) A vessel issued a *Loligo* and butterflyfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination

of observer deployment, telephone number or e-mail address for contact; and the date, time, port of departure, and approximate trip duration, at least 72 hr, but no more than 10 days prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

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

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

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

to carry an observer, provided an observer is available, on its next trip.

11. Section 648.70 is revised to read as follows:

§ 648.70 Annual Catch Limit (ACL).

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be less than or equal to the ABCs recommended by the SSC.

(1) *Sectors*. The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guidelines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity*. The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

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

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

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

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

12. Section 648.71 is revised to read as follows:

§ 648.71 Annual Catch Targets (ACT).

(a) The MAFMC staff shall identify and review the relevant sources of management uncertainty to recommend ACTs to the MAFMC as part of the surfclam and ocean quahog specification process. The MAFMC staff recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information

considered in the ACT recommendation process.

(1) *Sectors*. The surfclam ACT and the sum of the Maine and non-Maine ocean quahog ACTs shall be less than or equal to the ACL for the corresponding stock. The MAFMC staff shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section.

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

(b) *Performance review*. The MAFMC staff shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.70(b)(1) through (3).

13. Section 648.72 is revised to read as follows:

§ 648.72 Specifications.

(a) *Establishing catch quotas*. The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section. The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L). The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L). Quotas for surfclams and ocean quahogs may be specified below these ranges if the ABC recommendation of the SSC limits the ACL to a value less than the minimum of the range indicated.

(1) *Quota reports*. On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for up to a 3-year

period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

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

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

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

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

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

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

(c) *Annual quotas*. The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. At the end of a multiyear quota period, NMFS will issue

notification in the **Federal Register** if the previous year's specifications will not be changed.

14. Section 648.73 is revised to read as follows:

§ 648.73 Accountability measures.

(a) *Commercial ITQ fishery*. (1) If the ACL for surfclam or ocean quahog is exceeded, and the overage can be attributed to one or more ITQ allocation holders, the full amount of the overage will be deducted from the appropriate ITQ allocation in the following fishing year.

(2) Any amount of an ACL overage that cannot be otherwise attributed to an ITQ allocation holder will be deducted from the appropriate ACL in the following fishing year.

(b) *Maine mahogany quahog fishery*. If the ocean quahog ACL is exceeded, and the Maine mahogany quahog fishery is responsible for the overage, then the Maine fishery ACT shall be reduced in the following year by an amount equal to the ACL overage.

15. Section 648.74 is revised to read as follows:

§ 648.74 Annual individual allocations.

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

allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.77(b).

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

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

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

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

16. Section 648.75 is revised to read as follows:

§ 648.75 Shucking at sea and minimum surfclam size.

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

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

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

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

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

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

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

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

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

(3) *Suspension*. Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the **Federal Register**, the minimum shell-length standard, unless discard, catch, and survey data indicate that 30 percent of

the surfclams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell length is not attributable to beds where the growth of individual surfclams has been reduced because of density dependent factors.

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

17. Section 648.76 is revised to read as follows:

§ 648.76 Closed areas.

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

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

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

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

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

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

(1) *Closure*. The Regional Administrator may close an area to surfclams and ocean quahog fishing if

he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surfclams of which:

- (i) Sixty percent or more are smaller than 4.5 inches (11.43 cm); and
- (ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

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

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

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

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

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

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin.—*(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed

to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for PSP. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources.

(2) [Reserved]

18. Section 648.77 is revised to read as follows:

§ 648.77 Cage identification.

Except as provided in § 648.78, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surfclams and ocean quahogs:

(a) *Tagging.* Before offloading, all cages that contain surfclams or ocean quahogs must be tagged with tags acquired annually under provisions of paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage. A tag is required for every 60 ft³ (1,700 L) of cage volume, or portion thereof. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by authorized law enforcement agents.

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.74 prior to the beginning of each fishing year, or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.74(a). Each tag represents 32 bu (1,700 L) of allocation.

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

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

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

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

(g) *Transfer.* See § 648.74(b)(2).

(h) *Presumptions.* Surfclams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under the provisions of § 648.77(b) or transferred under the provisions of § 648.74(b).

19. Section 648.78 is added to read as follows:

§ 648.78 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.74 and 648.77. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally permitted dealers for inspection by NMFS.

(b) *ACT monitoring and closures—*(1) *Catch quota.* (i) The ACT for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bu (35,239 hL). The ACL may be revised annually within the range of 17,000 and 100,000 Maine bu (5,991 and 35,239 hL) following the

procedures set forth in §§ 648.72 and 648.73, if applicable.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.74 shall be applied against the Maine mahogany quahog ACT, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.74 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the ACT based on dealer reports and other available information, and shall determine the date when the ACT will be harvested. NMFS shall publish notification in the **Federal Register** advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested, and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The MAFMC shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surfclam and Ocean Quahog Committee of the MAFMC, regarding revisions to the annual quota and other management measures.

20. Section 648.79 is added to read as follows:

§ 648.79 Framework adjustments to management measures.

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

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or

additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; suspension or adjustment of the surfclam minimum size limit; and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs). Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

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

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

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

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

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

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

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the

recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

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

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

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

(b) [Reserved]

21. Section 648.100 is revised to read as follows:

§ 648.100 ACL.

(a) The Summer Flounder Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be less than or equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

(2) *Periodicity.* The summer flounder commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

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

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

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

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

22. Section 648.101 is revised to read as follows:

§ 648.101 ACT.

(a) The Summer Flounder Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Summer Flounder Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Summer Flounder Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

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

(b) *Performance review.* The Summer Flounder Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

23. Section 648.102 is revised to read as follows:

§ 648.102 Specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Summer Flounder Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific

ACL for an upcoming fishing year or years will not be exceeded. The measures to be considered by the Summer Flounder Monitoring Committee are:

(1) Research quota set from a range of 0 to 3 percent of the allowable landings level for both the commercial and recreational sectors.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Restrictions on gear other than otter trawls.

(5) Adjustments to the exempted area boundary and season specified in § 648.108(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data reviewed by Summer Flounder Monitoring Committee during the specification process, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(6) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the recreational harvest limit, set after reductions for research quota.

(7) Recreational minimum fish size.

(8) Recreational season.

(9) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(10) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(11) Modification of existing AM measures and ACT control rules utilized by the Summer Flounder Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary that are projected to ensure the sector-specific ACLs for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these

recommendations and any recommendations of the ASMFC.

(c) After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a coastwide commercial quota, a recreational harvest limit, research set-aside, adjustments to ACL or ACT resulting from AMs, and additional management measures for the commercial fishery. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

(1) *Distribution of annual commercial quota.* (i) The annual commercial quota will be distributed to the states, based upon the following percentages; state followed by percent share in parenthesis: Maine (0.04756); New Hampshire (0.00046); Massachusetts (6.82046); Rhode Island (15.68298); Connecticut (2.25708); New York (7.64699); New Jersey (16.72499); Delaware (0.01779); Maryland (2.03910); Virginia (21.31676); North Carolina (27.44584).

(ii) *[Reserved]*

(2) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to transfer part or its entire annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(i) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(A) The transfer or combination would preclude the overall annual quota from being fully harvested;

(B) The transfer addresses an unforeseen variation or contingency in the fishery; and

(C) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(ii) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made;

(iii) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the **Federal Register**.

(iv) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(d) *Recreational specification measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and ASMFC measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different combinations of minimum fish sizes, possession limits, and closed seasons

that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as is practicable to implement the overall percent adjustment in recreational landings required for the fishing year, and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the **Federal Register** to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(e) *Research quota.* See § 648.22(g).

24. Section 648.103 is revised to read as follows:

§ 648.103 Accountability measures.

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

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

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

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

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

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

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

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

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

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

(e) *State/Federal disconnect AM.* If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Summer Flounder Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as is practicable to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal

measures so no differential effects occur on Federal permit holders.

25. Section 648.104 is revised to read as follows:

§ 648.104 Minimum fish sizes.

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

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19.5 inches (49.53 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

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

26. Section 648.105 is revised to read as follows:

§ 648.105 Recreational fishing season.

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

27. Section 648.106 is revised to read as follows:

§ 648.106 Possession restrictions.

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

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

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

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

(d) *Commercially permitted vessel possession limits.* Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in³ (2.5 ft³ or 70.79 cm³).

28. Section 648.107 is revised to read as follows:

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

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2010 are the conservation equivalent of the recreational fishing season, minimum fish size, and possession limit prescribed in

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

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

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the ASMFC, shall be subject to the following precautionary default measures: Season, May 1–September 30; minimum size, 21.5 inches (54.61 cm); and a possession limit of two fish.

29. Section 648.108 is revised to read as follows:

§ 648.108 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.8 kg) or more of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of

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

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

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

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

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

(ii) [Reserved]

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

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

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

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

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

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

(d) *Mesh obstruction or constriction.*

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

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

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more

of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have "available for immediate use" any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not "available for immediate use."

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

30. Section 648.109 is added to read as follows:

§ 648.109 Sea turtle conservation.

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

31. Section 648.110 is added to read as follows:

§ 648.110 Framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including commercial

quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs); any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

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

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

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

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

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

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures

and, if after reviewing the MAFMC's recommendation and supporting information:

(i) NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

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

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

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

(b) [Reserved]

32. Section 648.120 is revised to read as follows:

§ 648.120 ACL.

(a) The Scup Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be less than or equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder, Scup, and Black Sea Bass FMP.

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

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

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

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

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

33. Section 648.121 is revised to read as follows:

§ 648.121 ACT.

(a) The Scup Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Scup Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Scup Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

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

(b) *Performance review.* The Scup Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

34. Section 648.122 is revised to read as follows:

§ 648.122 Specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Scup Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the ASMFC through the specifications process, for use in conjunction with each ACL and ACT, a sector specific research set-aside, estimates of sector-related discards, recreational harvest limit, and commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The measures to be

considered by the Scup Monitoring Committee are as follows:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified exploitation rate.

(2) The commercial quota for each of the three periods specified in paragraph (c)(1) of this section for research quota.

(3) Possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24-hour period (calendar day).

(4) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(5) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested, except as provided in paragraph (c)(5) of this section.

(6) Minimum mesh size.

(7) Recreational possession limit set from a range of 0 to 50 scup to achieve the recreational harvest limit, set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear.

(11) Season and area closures in the commercial fishery.

(12) Total allowable landings on an annual basis for a period not to exceed 3 years.

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

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

(b) *Specification of fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified ACLs will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule to implement a commercial quota in the **Federal Register**, specifying the amount of quota

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

(c) *Distribution of commercial quota.*

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

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

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

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

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

35. Section 648.123 is revised to read as follows:

§ 648.123 Accountability measures.

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

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

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

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

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

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

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

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year

average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

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

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

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

36. Section 648.124 is revised to read as follows:

§ 648.124 Commercial Season and Commercial fishery area restrictions.

(a) *Southern Gear Restricted Area—*
(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends

(including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

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

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

(b) *Northern Gear Restricted Area 1—*
(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area 1 that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Northern Gear Restricted Area 1 is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA 1

| Point | N. lat. | W. long. |
|------------|---------|----------|
| NGA1 | 41°00' | 71°00' |
| NGA2 | 41°00' | 71°30' |
| NGA3 | 40°00' | 72°40' |
| NGA4 | 40°00' | 72°05' |
| NGA1 | 41°00' | 71°00' |

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear

Restricted Area 1 that are fishing for, or in possession of, the following non-exempt species: *Loligo* squid, black sea bass, and silver hake (whiting).

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

(d) *[Reserved]*

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

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

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

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

37. Section 648.125 is revised to read as follows:

§ 648.125 Gear restrictions.

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

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

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

(4) *Mesh obstruction or constriction.*

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

obstructs or constricts the meshes of the net in any manner.

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

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

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

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

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

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

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

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

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

(iv) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted provided the device does not impair the egress design function of the

ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in § 648.122.

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel's home port state.

37. Section 648.126 is revised to read as follows:

§ 648.126 Minimum fish sizes.

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

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

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

38. Section 648.127 is revised to read as follows:

§ 648.127 Recreational fishing season.

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

39. Section 648.128 is added to read as follows:

§ 648.128 Possession restrictions.

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

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

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

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

40. Section 648.129 is added to read as follows:

§ 648.129 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 222 and 223. In addition to the measures required under those parts, NMFS will investigate the extent of sea turtle takes in flynet gear and, if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

41. Section 648.130 is added to read as follows:

§ 648.130 Framework adjustments to management measures.

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

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate

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

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

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

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

(b) [Reserved]

42. Section 648.140 is revised to read as follows:

§ 648.140 Annual Catch Limit (ACL).

(a) The Black Sea Bass Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be less than or equal to the ABC recommended by the SSC.

(1) *Sector allocations.* The commercial and recreational fishing sector ACLs will be established consistent with the allocation guidelines contained in the Summer Flounder,

Scup, and Black Sea Bass Fishery Management Plan.

(2) *Periodicity.* The black sea bass commercial and recreational sector ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

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

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

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

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

43. Section 648.141 is revised to read as follows:

§ 648.141 ACT.

(a) The Black Sea Bass Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Black Sea Bass Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Black Sea Bass Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

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

(b) *Performance review.* The Black Sea Bass Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1)–(3).

44. Section 648.142 is revised to read as follows:

§ 648.142 Specifications.

(a) *Commercial quota, recreational landing limit, research set-aside, and other specification measures.* The Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to ensure the sector-specific ACL for an upcoming year or years will not be exceeded. The following measures are to be consisted the Black Sea Bass Monitoring Committee:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed.

(2) A commercial quota, allocated annually.

(3) A commercial possession limit for all moratorium vessels, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

(4) Commercial minimum fish size.

(5) Minimum mesh size in the codend or throughout the net and the catch threshold that will require compliance with the minimum mesh requirement.

(6) Escape vent size.

(7) A recreational possession limit set after the reduction for research quota.

(8) Recreational minimum fish size.

(9) Recreational season.

(10) Restrictions on gear other than otter trawls and pots or traps.

(11) Total allowable landings on an annual basis for a period not to exceed 3 years.

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

(13) Modification of the existing AM measures and ACT control rules utilized by the Black Sea Bass Monitoring Committee.

(b) *Specification fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the MAFMC with

respect to the measures necessary to assure that the ACLs are not exceeded. The MAFMC shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that sector ACLs are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the recreational sector ACL is not exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement the measures necessary to assure that recreational sector ACL is not exceeded.

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated on a coastwide basis.

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

45. Section 648.143 is revised to read as follows:

§ 648.143 Accountability measures.

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters, will be counted against the quota by the state in which it is landed, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the

calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

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

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

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

(1) *Recreational ACL overage evaluation.* The recreational sector ACL

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

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

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

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

46. Section 648.144 is revised to read as follows:

§ 648.144 Gear restrictions.

(a) *Trawl gear restrictions—(1) General.* (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish

with nets that have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh throughout.

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

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

(3) *Mesh obstruction or constriction.*

(i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to paragraph (a)(1)(i) of this section.

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

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

shown not to have been in recent use, is considered to be not "available for immediate use."

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

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

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

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

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

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

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

(ii) The use of a single non-degradable retention device designed to prevent loss of the ghost panel after the degradable materials have failed is permitted, provided the device does not impair the egress design function of the ghost panel by obstructing the opening or by preventing the panel from opening at such time that the degradable fasteners have completely deteriorated.

47. Section 648.145 is revised to read as follows:

§ 648.145 Possession limit.

(a) No person shall possess more than 25 black sea bass in, or harvested from the EEZ unless that person is the owner

or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

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

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

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4) may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) tote.

48. Section 648.146 is revised to read as follows:

§ 648.146 Recreational fishing season.

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

49. Section 648.147 is revised to read as follows:

§ 648.147 Minimum sizes.

(a) *Moratorium (commercially permitted vessels.* The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) normal that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.142.

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 12.5 inches (31.75 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members.

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

50. Section 648.148 is added to read as follows:

§ 648.148 Special management zones.

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

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

- (1) Fairness and equity;
- (2) Promotion of conservation;
- (3) Avoidance of excessive shares;

(4) Consistency with the objectives of Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law;

(5) The natural bottom in and surrounding potential SMZs; and

(6) Impacts on historical uses.

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

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

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

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

51. Section 648.149 is added to read as follows:

§ 648.149 Framework adjustments to management measures.

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

(1) *Adjustment process.* See § 648.110(a)(1).

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

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

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

(b) *[Reserved]*

52. Section 648.160 is revised to read as follows:

§ 648.160 ACL.

(a) The Bluefish Monitoring Committee shall recommend to the

MAFMC an ACL for the bluefish fishery, which shall be less than or equal to the ABC recommended by the SSC.

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

(2) *[Reserved]*

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

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

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

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

53. Section 648.161 is revised to read as follows:

§ 648.161 ACTs.

(a) The Bluefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the bluefish specification process. The Bluefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The sum of the commercial and recreational sector-specific ACTs shall be less than or equal to the fishery level ACL. The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with paragraph (a) of this section.

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

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.160(b)(1) through (3).

54. Section 648.162 is revised to read as follows:

§ 648.162 Specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

- (1) A fishery-level TAL;
- (2) Research quota set from a range of 0 to 3 percent of TAL;
- (3) Commercial minimum fish size;
- (4) Minimum mesh size;
- (5) Recreational possession limit set from a range of 0 to 20 bluefish;
- (6) Recreational minimum fish size;
- (7) Recreational season;
- (8) Restrictions on gear other than otter trawls and gill nets;
- (9) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports; and
- (10) Modification of existing AM measures and ACT control rules utilized by the Bluefish Monitoring Committee.

(b) *Allocation of TAL—(1) Recreational harvest limit.* A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit. If research quota is specified as described in paragraph (g) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota.* A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (g) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(c) *Annual fishing measures.* The MAFMC's Coastal Migratory Committee

shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the MAFMC measures necessary to ensure that the ACL will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable ACL will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** as soon as practicable, to implement an ACL, ACTs, research quota, a coastwide commercial quota, individual state commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the ACL will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

(d) *Distribution of annual commercial quota.*—(1) The annual commercial quota will be distributed to the states, based upon the following percentages, state followed by allocation in parentheses: ME (0.6685); NH (0.4145); MA (6.7167); RI (6.8081); CT (1.2663); NY (10.3851); NJ (14.8162); DE (1.8782); MD (3.0018); VA (11.8795); NC (32.0608); SC (0.0352); GA (0.0095); and FL (10.0597). **NOTE:** The sum of all state allocations does not add to 100 because of rounding.

(2) *[Reserved]*

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent

state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer or combination has been published in the **Federal Register**.

(f) Based upon any changes in the landings data available from the states for the base years 1981–89, the ASMFC and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the changes in allocation.

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

55. Section 648.163 is revised to read as follows:

§ 648.163 Accountability Measures (AMs).

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

determining if the ACL has been exceeded.

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

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

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

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

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded, landings from the recreational fishery are determined to have caused the overage, and no transfer between the commercial and recreational sector has

occurred for the fishing year, as outlined in § 648.162(b)(2), then the exact amount, in pounds, by which the ACL was exceeded will be deducted, as soon as is practicable, from a subsequent single fishing year recreational ACT.

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

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

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

56. Section 648.164 is revised to read as follows:

§ 648.164 Possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

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

57. Section 648.165 is revised to read as follows:

§ 648.165 Minimum fish sizes.

If the MAFMC determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.162(c) or 648.167.

58. Section 648.166 is added to read as follows:

§ 648.166 Gear restrictions.

If the MAFMC determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.162(c) or 648.167.

59. Section 648.167 is added to read as follows:

§ 648.167 Framework adjustment to management measures.

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

(1) *Adjustment process.* After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk

policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports and/or industry-funded observers or observer set-aside programs); and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

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

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

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

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

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

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

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the

recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

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

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

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

60. Section 648.230 is revised to read as follows:

§ 648.230 ACLs.

(a) The Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee, an ACL for the commercial spiny dogfish fishery, which shall be less than or equal to the domestic ABC (*i.e.*, the ABC minus Canadian catch) recommended by the SSC as specified in § 648.20.

(1) *Periodicity.* The spiny dogfish ACL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

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

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

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

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

61. Section 648.231 is revised to read as follows:

§ 648.231 ACT and Total Allowable Level of Landings (TAL).

(a) The Spiny Dogfish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT and a TAL for the fishery as part of the spiny dogfish specification process specified in § 648.232. The Spiny Dogfish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, domestic commercial and recreational discards, and any additional relevant information considered in the ACT and TAL recommendation process.

(1) The ACT shall be identified as less than or equal to the ACL.

(2) The Spiny Dogfish Monitoring Committee shall recommend a TAL to the Joint Spiny Dogfish Committee, which accounts for domestic commercial and recreational discards (ACT minus domestic dead discards). The TAL is equivalent to the annual coastwide commercial quota.

(b) *Periodicity.* The TAL may be established on an annual basis for up to 5 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(c) *Performance review.* The Spiny Dogfish Monitoring Committee shall conduct a detailed review of fishery performance relative to TALs in conjunction with any ACL performance review, as outlined in § 648.230(b).

62. Section 648.232 is revised to read as follows:

§ 648.232 Specifications.

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

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

(6) Other gear restrictions; and
 (7) Changes to AMs and ACT control rules.

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

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

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

(d) [Reserved]

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

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

63. Section 648.233 is revised to read as follows:

§ 648.233 AMs.

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

(b) *ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (including both landings and dead discards) to determine if the ACL has been exceeded.

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

64. Section 648.235 is revised to read as follows:

§ 648.235 Possession and landing restrictions.

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

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and
 (2) Land only one trip of spiny dogfish per calendar day.

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

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and
 (2) Land only one trip of spiny dogfish per calendar day.

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

65. Section 648.237 is removed and reserved to read as follows:

§ 648.237 [Reserved]

66. Section 648.238 is removed and reserved to read as follows:

§ 648.238 [Reserved]

67. Section 648.239 is added to read as follows:

§ 648.239 Framework adjustments to management measures.

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the Northeast Region SBRM, including the CV-based performance

standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside program; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

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

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

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

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

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

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures, then:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a

proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the **Federal Register**.

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

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

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

68. Section 648.290 is revised to read as follows:

§ 648.290 ACL.

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

(1) *[Reserved]*

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

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

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

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

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

69. Section 648.291 is revised to read as follows:

§ 648.291 ACT.

(a) The Tilefish Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend an ACT as part of the tilefish specification process.

The Tilefish Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

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

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

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

70. Section 648.292 is added to read as follows:

§ 648.292 Specifications.

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

(a) *Annual specification process.* The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, tilefish landings and discards information, and any other relevant available data to determine if the ACL, ACT, or total allowable landings (TAL) requires modification to respond to any changes to the stock's biological reference points or to ensure that the rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend ACL, ACT, and TAL to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate ACL, ACT, TAL, and other management measures for a single fishing year or up to 3 years. The MAFMC shall review these recommendations and any public comments received, and recommend to

the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to assure that the TAL will not be exceeded, for the next fishing year, or up to 3 fishing years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the **Federal Register** specifying the annual ACL, ACT, TAL and any management measures to assure that the TAL will not be exceeded for the upcoming fishing year or years. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement the ACL, ACT, TAL and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (e) of this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

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

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

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

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

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

71. Section 648.293 is revised to read as follows:

§ 648.293 Accountability measures.

(a) If the ACL is exceeded, the amount of the ACL overage that cannot be directly attributed to IFQ allocation holders having exceeded their IFQ allocation will be deducted from the

ACL in the following fishing year. All overages directly attributable to IFQ allocation holders will be deducted from the appropriate IFQ allocation(s) in the subsequent fishing year, as required by § 648.294(f).

(b) *[Reserved]*

72. Section 648.294 is revised to read as follows:

§ 648.294 Individual fishing quota (IFQ) program.

(a) *IFQ allocation permits*. After adjustments for incidental catch, research set asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ allocation permit holders who held an IFQ permit as of September 1 of a given fishing year. Allocations shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. These allocations shall be issued in the form of an annual IFQ allocation permit.

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

(i) *[Reserved]*

(ii) *Renewal applications*.

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

end of the fishing year for which the permit is required.

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

(3) *Duration*. An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the allocation percentage under paragraph (e) of this section. All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS that includes the vessel permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land IFQ tilefish pursuant to the IFQ allocation permit to be effective.

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

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

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

(7) *Abandonment or voluntary relinquishment*. Any IFQ Allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph

(h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c) [Reserved]

(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all temporary IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred IFQ allocation, but only if none of the transferred allocation has been landed.

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

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

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

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

IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder.

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

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

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

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned, pursuant to an enforcement proceeding under 15 CFR part 904; the transfer will result in the transferee having a tilefish IFQ allocation that exceeds 49 percent

of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a); or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

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

(h) *IFQ cost recovery.* A fee shall be determined as described in paragraph (h)(1) of this section, and collected to recover the government costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation permit, including allocation that he/she leases to another IFQ allocation permit holder. A tilefish IFQ allocation permit holder, with a permanent allocation, shall be

responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations. NMFS will create an annual IFQ allocation bill for each cost-recovery billing period and provide it to each IFQ allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

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

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

(ii) *[Reserved]*

(2) *Fee payment procedure.* An IFQ allocation permit holder who has incurred a cost-recovery fee must pay the fee to NMFS within 45 days of the date of the bill. Cost-recovery payments shall be made electronically via the Federal Web portal, <http://www.pay.gov>, or other Internet sites designated by the

Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost-recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost-recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account.

Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not possible.

(3) *Payment compliance.* If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ allocation permit holder has not paid the full amount due, he/she shall notify the IFQ allocation permit holder in writing of the deficiency. NMFS shall explain the deficiency and provide the IFQ allocation permit holder 30 days from the date of the notice, either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ allocation permit holder submits evidence in support of the appropriateness of his/her payment, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ allocation permit holder may be issued a letter of authorization to fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ allocation permit shall not be issued, and the letter of authorization shall not be valid until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued. If the Regional Administrator determines that the IFQ allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ allocation permit has already been issued, the Regional

Administrator shall issue a FAD and will notify the IFQ allocation permit holder in writing. The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ allocation permit holder may renew the tilefish IFQ allocation permit. If NMFS does not receive full payment of a recoverable cost fee prior to the end of the cost-recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

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

73. Section 648.295 is revised to read as follows:

§ 648.295 Tilefish incidental trip limits.

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

(b) *In-season closure of the incidental fishery.* The Regional Administrator will monitor the harvest of the tilefish incidental TAL based on dealer reports and other available information, and shall determine the date when the incidental tilefish TAL has been landed. The Regional Administrator shall

publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the incidental tilefish fishery is closed for the remainder of the fishing year.

74. Section 648.296 is revised to read as follows:

648.296 Recreational possession limit.

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

75. Section 648.297 is added to read as follows:

§ 648.297 Gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

| Canyon | N. Lat. | | | W. Long. | | |
|---------------------|---------|------|---------|----------|------|---------|
| | Degrees | Min | Seconds | Degrees | Min | Seconds |
| Oceanographer | 40.0 | 29.0 | 50.0 | 68.0 | 10.0 | 30.0 |
| | 40.0 | 29.0 | 30.0 | 68.0 | 8.0 | 34.8 |
| | 40.0 | 25.0 | 51.6 | 68.0 | 6.0 | 36.0 |
| | 40.0 | 22.0 | 22.8 | 68.0 | 6.0 | 50.4 |
| | 40.0 | 19.0 | 40.8 | 68.0 | 4.0 | 48.0 |
| | 40.0 | 19.0 | 5.0 | 68.0 | 2.0 | 19.0 |
| | 40.0 | 16.0 | 41.0 | 68.0 | 1.0 | 16.0 |
| Lydonia | 40.0 | 14.0 | 28.0 | 68.0 | 11.0 | 28.0 |
| | 40.0 | 31.0 | 55.2 | 67.0 | 43.0 | 1.2 |
| | 40.0 | 28.0 | 52.0 | 67.0 | 38.0 | 43.0 |
| | 40.0 | 21.0 | 39.6 | 67.0 | 37.0 | 4.8 |
| | 40.0 | 21.0 | 4.0 | 67.0 | 43.0 | 1.0 |
| Veatch | 40.0 | 26.0 | 32.0 | 67.0 | 40.0 | 57.0 |
| | 40.0 | 28.0 | 31.0 | 67.0 | 43.0 | 0.0 |
| | 40.0 | 0.0 | 40.0 | 69.0 | 37.0 | 8.0 |
| | 40.0 | 0.0 | 41.0 | 69.0 | 35.0 | 25.0 |
| Norfolk | 39.0 | 54.0 | 43.0 | 69.0 | 33.0 | 54.0 |
| | 39.0 | 54.0 | 43.0 | 69.0 | 40.0 | 52.0 |
| | 37.0 | 5.0 | 50.0 | 74.0 | 45.0 | 34.0 |
| | 37.0 | 6.0 | 58.0 | 74.0 | 40.0 | 48.0 |
| | 37.0 | 4.0 | 31.0 | 74.0 | 37.0 | 46.0 |
| | 37.0 | 4.0 | 1.0 | 74.0 | 33.0 | 50.0 |
| | 36.0 | 58.0 | 37.0 | 74.0 | 36.0 | 58.0 |
| | 37.0 | 4.0 | 26.0 | 74.0 | 41.0 | 2.0 |

§ 648.298 [Reserved]

76. Section 648.298 is reserved.

77. Section 648.299 is added to read as follows:

§ 648.299 Framework specifications.

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

(1) *Specific management measures.* The following specific management measures may be adjusted at any time through the framework adjustment process:

- (i) Minimum fish size;
- (ii) Minimum hook size;
- (iii) Closed seasons;
- (iv) Closed areas;
- (v) Gear restrictions or prohibitions;
- (vi) Permitting restrictions;
- (vii) Gear limits;
- (viii) Trip limits;
- (ix) Adjustments within existing ABC control rule levels;
- (x) Adjustments to the existing MAFMC risk policy;
- (xi) Introduction of new AMs, including sub ACTs;

(xii) Annual specification quota setting process;

(xiii) Tilefish FMP Monitoring Committee composition and process;

(xiv) Description and identification of EFH;

(xv) Fishing gear management measures that impact EFH;

(xvi) Habitat areas of particular concern;

(xvii) Set-aside quotas for scientific research;

(xviii) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs;

(xix) Recreational management measures, including the bag limit, minimum fish size limit, seasons, and gear restrictions or prohibitions; and

(xx) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.

(xxi) Measures that require significant departures from previously contemplated measures or that are

otherwise introducing new concepts may require a formal amendment of the FMP instead of a framework adjustment.

(2) *Adjustment process.* If the MAFMC determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second MAFMC meeting on that framework action.

(3) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC will make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should

be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

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

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

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

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

(4) *Regional Administrator action.* If the MAFMC's recommendation includes

adjustments or additions to management measures and, after reviewing the MAFMC's recommendation and supporting information:

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

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

Administrator concurs with the MAFMC's recommendation, the measures will be issued as a final rule in the **Federal Register**.

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

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

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

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

| Section | Remove | Add | Frequency |
|--------------------------------|-------------------------------------|--------------------------------------|-----------|
| § 648.1(a) | surf clam | surfclam | 2 |
| § 648.2 | surf clam | surfclam | 9 |
| § 648.2 | § 648.70 | § 648.74 | 1 |
| § 648.2 | § 648.291(e)(1) | § 648.294(e)(1) | 2 |
| § 648.4(a) | surf clam | surfclam | 4 |
| § 648.4(a)(3) | § 648.105 | § 648.106 | 1 |
| § 648.4(a)(3)(i)(A) | § 648.105 | § 648.106 | 1 |
| § 648.4(a)(3)(i)(L)(ii) | § 648.105 | § 648.106 | 1 |
| § 648.4(a)(3)(i)(L)(iii) | § 648.104(b)(1) | § 648.108(b)(1) | 1 |
| § 648.4(a)(5)(ii) | § 648.21 | § 648.22 | 1 |
| § 648.4(a)(6) | § 648.125 | § 648.128 | 1 |
| § 648.4(a)(12) | § 648.291 | § 648.294 | 1 |
| § 648.4(a)(12) | § 648.293 | § 648.295 | 1 |
| § 648.4(a)(12)(i) | § 648.295 | § 648.296 | 1 |
| § 648.6(a)(1) | surf clam | surfclam | 2 |
| § 648.6(c) | surf clam | surfclam | 1 |
| § 648.7(b)(1)(ii) | surf clam | surfclam | 4 |
| § 648.7(b)(2)(ii) | § 648.291(a) | § 648.294(a) | 1 |
| § 648.8(e) | surf clam | surfclam | 1 |
| § 648.12 | surf clam | surfclam | 1 |
| § 648.12(c) | surf clams | surfclams | 1 |
| § 648.13(i)(2)(iii) | § 648.123(a)(2), (3), and (4) | § 648.125 (a)(2), (3), and (4) | 1 |
| § 648.14(g)(1) | § 648.26 | § 648.27 | 1 |
| § 648.14(g)(1)(iii) | § 648.21(g) | § 648.22(g) | 1 |
| § 648.14(g)(2) | § 648.21(g) | § 648.22(g) | 1 |
| § 648.14(g)(2)(i) | § 648.21 | § 648.22 | 1 |
| § 648.14(g)(2)(ii)(C) | § 648.25 | § 648.26 | 1 |
| § 648.14(g)(3) | § 648.21(g) | § 648.22(g) | 1 |
| § 648.14(g)(3)(i) | § 648.21(d) | § 648.22(d) | 1 |
| § 648.14(h) | § 648.21(g) | § 648.22(g) | 1 |
| § 648.14(n)(1) | § 648.21(g) | § 648.22(g) | 1 |
| § 648.14(n)(1)(i) | § 648.105 | § 648.106 | 1 |
| § 648.14(n)(1)(i) | § 648.102 | § 648.105 | 1 |
| § 648.14(n)(1)(ii)(B) | § 648.105 | § 648.106 | 1 |
| § 648.14(n)(1)(iii) | § 648.104 | § 648.108 | 1 |
| § 648.14(n)(1)(iii) | § 648.105(a) | § 648.106(a) | 1 |
| § 648.14(n)(2) | § 648.100(f) | § 648.102(e) | 1 |
| § 648.14(n)(2)(i)(A) | § 648.104 | § 648.108 | 1 |
| § 648.14(n)(2)(i)(B) | § 648.105(d) | § 648.106(d) | 1 |
| § 648.14(n)(2)(i)(B) | § 648.104(a) | § 648.108(a) | 1 |
| § 648.14(n)(2)(i)(B) | § 648.104(b) | § 648.108(b) | 1 |
| § 648.14(n)(2)(iii)(A) | § 648.104 | § 648.108 | 1 |
| § 648.14(n)(2)(iii)(A) | § 648.104(e) | § 648.108(e) | 1 |
| § 648.14(n)(2)(iii)(B) | § 648.104 | § 648.108 | 1 |
| § 648.14(n)(2)(iii)(B) | § 648.104(f) | § 648.108(f) | 1 |
| § 648.14(n)(2)(iii)(C) | § 648.104(b)(1) | § 648.108(b)(1) | 1 |
| § 648.14(n)(2)(iii)(C) | § 648.104 | § 648.108 | 1 |

| Section | Remove | Add | Frequency |
|-------------------------------------|-------------------------------------|------------------------------------|-----------|
| § 648.14(n)(2)(iii)(C)(3) | § 648.100(f) | § 648.102(e) | 1 |
| § 648.14(n)(2)(iii)(C)(3)(i) | § 648.105 | § 648.106 | 1 |
| § 648.14(n)(2)(iii)(C)(3)(ii) | § 648.102 | § 648.105 | 1 |
| § 648.14(o)(1) | § 648.120(e) | § 648.122(e) | 1 |
| § 648.14(o)(1)(ii)(A) | § 648.122(g) | § 648.124 and 648.127 | 1 |
| § 648.14(o)(1)(ii)(D) | § 648.123 | § 648.125 | 2 |
| § 648.14(o)(1)(ii)(E) | § 648.120(b)(3), (4), and (7) | § 648.122(a) | 1 |
| § 648.14(o)(1)(iii) | § 648.124 | § 648.126 | 1 |
| § 648.14(o)(1)(v) | § 648.123 | § 648.125 | 1 |
| § 648.14(o)(1)(vi) | § 648.122 (a) or (b) | § 648.124 (a) or (b) | 1 |
| § 648.14(o)(1)(vi) | § 648.122 and 648.123(a) | § 648.124 and 648.125(a) | 1 |
| § 648.14(o)(1)(vi) | § 648.123(b) | § 648.125(a)(5) | 1 |
| § 648.14(o)(2) | § 648.120(e) | § 648.122(e) | 1 |
| § 648.14(o)(2)(i) | § 648.123 | § 648.125 | 2 |
| § 648.14(o)(2)(i)(C) | § 648.122 | § 648.124 | 1 |
| § 648.14(o)(2)(ii)(B)(3) | § 648.120(e) | § 648.122(e) | 1 |
| § 648.14(o)(2)(ii)(B)(3)(i) | § 648.125 | § 648.128 | 1 |
| § 648.14(o)(2)(ii)(B)(3)(ii) | § 648.122 | § 648.124 | 1 |
| § 648.14(o)(2)(ii)(B)(3)(v) | § 648.124(b) | § 648.126(b) | 1 |
| § 648.14(p)(1) | § 648.140(e) | § 648.142(d) | 1 |
| § 648.14(p)(1)(i) | § 648.142 | § 648.146 | 1 |
| § 648.14(p)(1)(v) | § 648.143 | § 648.147 | 1 |
| § 648.14(p)(2) | § 648.140(e) | § 648.142(d) | 1 |
| § 648.14(p)(2)(ii)(B) | § 648.140 | § 648.142 | 1 |
| § 648.14(p)(2)(ii)(D)(3) | § 648.140(e) | § 648.142(d) | 1 |
| § 648.14(p)(2)(ii)(D)(3)(iii) | § 648.142 | § 648.146 | 1 |
| § 648.14(q) | § 648.160(h) | § 648.162(g) | 1 |
| § 648.14(q)(2)(i) | § 648.161(b) | § 648.163(b) | 1 |
| § 648.14(q)(2)(ii) | § 648.161(a) | § 648.163(a) | 1 |
| § 648.14(u)(2)(ii) | § 648.293 | § 648.295 | 1 |
| § 648.14(u)(2)(ii) | § 648.291(a) | § 648.294(a) | 1 |
| § 648.14(u)(2)(iii) | § 648.291(a) | § 648.294(a) | 1 |
| § 648.14(u)(2)(vi) | § 648.291(d)(3) or § 648.291 | § 648.294(d)(3) or § 648.295 | 1 |
| § 648.15(b)(1) | § 648.70 | § 648.74 | 1 |
| § 648.15(b)(2) | § 648.76 | § 648.78 | 1 |
| § 648.94(c)(3)(vi) | § 648.104(a)(1) | § 648.108(a)(1) | 1 |