TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
K160 Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	.....	.....	*1	4	K160	.....	##
K161 Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts (This listing does not include K125 or K126.).	.....	.....	*1	4	K161	.....	##

+—indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
*1—indicates that the 1-pound RQ is a CERCLA statutory RQ.
##—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

[FR Doc. 94–4051 Filed 2–28–94; 8:45 am]
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federal register

Tuesday
March 1, 1994

Part III

Environmental Protection Agency

40 CFR Part 238
Degradable Plastic Ring Carriers; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 238

[EPA/OSW–FR–93–DPRF–FFFFF; FRL–4842–2]

RIN 2050–AD09

Degradable Plastic Ring Rule

AGENCY: Environmental Protection Agency, EPA.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is issuing this final rule in response to "Degradable Plastic Ring Carriers" (Pub. L. 100–556), which in general provides that EPA shall require plastic ring carriers (for beverage cans) be made of degradable material. The statute requires that such ring carriers must be processed from a material that, in addition to allowing the ring carrier to perform its intended use, degrades quickly and does not pose a greater threat to the environment than nondegradable materials.

The Agency has chosen to require ring carrier processors to test their ring carriers using either a lab or an *in situ* test. The Agency has chosen a degradability performance standard for ring carriers, rather than specify a particular type of degradable plastic, to allow the processors of ring carriers the flexibility to use new technology.

EFFECTIVE DATE: Part 238 is effective on September 1, 1994. The incorporation by reference of American Society of Testing and Materials standards adopted in this rule is approved by the Director of the Federal Register as of September 1, 1994 in accordance with 5 U.S.C. 552(a).

ADDRESSES: The public record for this rulemaking (docket number F–92–DPRF–FFFFF) is located at the Resource Conservation and Recovery Act (RCRA) Docket Information Center, (5305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346. In the Washington, DC metropolitan area, call (703) 412–9810. For information regarding specific aspects of this notice, contact Tracy Bone, Office of Solid Waste (5306), USEPA, 401 M Street SW., Washington, DC, 20460, telephone (202) 260–5649.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
  A. Mechanisms of Degradation
  B. Factors Affecting Degradation
  C. State Laws
  D. Other Programs and Investigations Concerning Degradable Plastics
III. Summary of the Proposed Rule
IV. Response to Comment
  A. Definition of Terms
  B. Testing Degradation
  C. Measuring Degradation
  D. Time Limit for Degradation
  E. Preemption of State Regulations
V. Implementation and Summary of This Final Rule
VI. Administrative Designation and Regulatory Analysis
  A. Regulatory Impact Analysis
  B. Executive Order 12875
  C. Regulatory Flexibility Act
  D. Paperwork Reduction Act
VII. References

I. Authority

The Environmental Protection Agency (EPA) is promulgating this rule under the authority of sections 101, 102, and 103 of Public Law 100–556 (the "Act" or "Statute"). Although this statute has been codified in Subtitle B of the Resource Conservation and Recovery Act (42 U.S.C.A. 6914b and 6914b–1), it does not amend RCRA. In section 101 of this law, Congress found that: (1) Nondegradable plastic ring carrier devices have been found in large quantities in the marine environment; (2) fish and other wildlife have become entangled in such ring carriers; (3) such ring carriers can remain intact in the marine environment for decades, posing a threat to fish and other marine wildlife; and (4) sixteen states (as of 1988) had enacted laws requiring that ring carriers be made of degradable material in order to reduce litter and protect fish and wildlife. (As of 1991, eleven additional states have passed laws of this kind.)

As a result of these findings, Congress required EPA under section 103 of the Act to promulgate a rule that would require that plastic ring carriers (as defined in section 102(1)) be made of "naturally degradable material which, when discarded, decomposes within a period established by such regulation." 42 U.S.C. 6914b–1. The period to be established under the rule for such decomposition or degradation is to be "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." *Id.* Section 102(2) of the Act defines "naturally degradable material" to mean a "material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis." 42 U.S.C. 6914b(2). EPA, however, may not require the use of a degradable ring carrier if it is not "feasible" or if the degradable ring carriers present greater threats to the environment than nondegradable ring carriers. 42 U.S.C. 6914b–1.

II. Background

Concern about the disposal of plastic materials dates back to the early 1970s. Degradable plastics were seen by some as a solution for the problems of littering, landfill capacity, and wildlife entanglement and were developed for agricultural uses (mulch film, seedling pots) as well as medical applications (sutures, implants).

Renewed public concern over solid waste management and resource conservation in the past few years has been met by a resurgence of corporate and academic research into degradable plastics, and by the commercialization of various products designed to degrade. Specifically, there has been great interest in finding new degradable plastics made from non-petroleum-derived materials.

A. Mechanisms of Degradation

Plastics are polymers (chemicals made of repeating subunits) most often derived from petroleum. There are plastics derived from other natural materials that have many of the same properties as petroleum-derived plastics and have been used to make degradable products. Starch, for example, is a naturally-derived plastic that may include over 10,000 linked subunits. Lactic acid is used to make surgical sutures that degrade within the body after the incision has healed.

Plastics degrade by a number of different physical and chemical processes. In photodegradation, light causes physical changes that cause the plastic to become brittle and crumble into small pieces. Fragments may range in size from several centimeters in diameter to invisible macromolecular particles. All ring carriers in use currently, are made from low density polyethylene (LDPE) plastic and degrade in this manner.

Plastics also may be designed to be completely broken down and assimilated into the environment. These plastics differ from those that undergo photodegradation in that chemical

changes occur in the structure of polymer molecules, and the ultimate products are different from the original plastic. This chemical breakdown and alteration may be caused by one of a number of processes, including chemical reactions with natural compounds (*e.g.*, dissolution by naturally-occurring acids) and biological activity (*e.g.*, biodegradation). Degradable plastics also may be designed to combine degradation processes; they may break down to smaller fragments due to photodegradation and then rely on biodegradation to complete the process.

The Agency developed this rule based on data available for the photodegradable petroleum-based plastic ethylene carbon monoxide (E/CO), currently used for ring carriers. EPA discussed, in the proposal (April 7, 1993, 58 FR 18062), new plastic technology that could be used to make ring carriers. EPA does not, however, have specific information or data from plastic technology (other than E/CO) that can be used to process ring carriers. Despite the lack of information on new technology, EPA does not intend to impose any barriers to potential ring carrier products.

B. Factors Affecting Degradation

Two key factors affecting degradation are the time required for degradation and the environment in which degradation takes place. Given enough time or a harsh enough environment, all materials, including plastics not designed to degrade, will degrade. A meaningful definition of degradability must include a time limit that is appropriate for the planned use of and the ultimate method of disposal for the specific degradable product.

Environmental conditions also play a critical role in controlling degradation. The rate of biodegradation is primarily determined by temperature, moisture, and the presence of oxygen. For example, biodegradation is very slow in municipal solid waste landfills since these facilities are generally engineered to exclude water and air. In desert environments, the absence of water retards biodegradation. In northern climates, temperature is typically the factor that controls biodegradation rates. The intensity and wavelengths of light are the most important factors in determining the rate of photodegradation. Light intensity and wavelength also play roles in some types of biodegradation. Public Law 100–556 directs EPA to reduce the threat of entanglement of marine fish and wildlife; therefore, EPA requires degradation be tested under marine conditions (or equivalent laboratory conditions).

C. State Laws

In 1977, the State of Vermont enacted the first law banning the use of nondegradable ring carriers. By the end of 1991, 27 states had passed legislation specifically prohibiting the sale of nondegradable ring carriers. State legislation typically is written to prohibit the sale of nondegradable ring carriers by retail stores. Most of these states indicated that the primary purposes for adopting the legislation were to promote litter reduction and to address wildlife entanglement concerns. The states that have adopted legislation banning nondegradable ring carriers, the dates the legislation took effect, the time limit required for degradation under each state law, and allowable mechanisms for degradation (as of 1992), are listed in reference 4.

D. Other Programs and Investigations Concerning Degradable Plastics

Reflecting the significant public and legislative interest in the use of degradable plastics, a number of organizations have addressed the issues related to degradable plastics in the past few years. These organizations include EPA, the U.S. General Accounting Office, the Congressional Office of Technology Assessment, the U.S. Food and Drug Administration (FDA), the U.S. Federal Trade Commission (FTC), the National Institute of Standards and Technology, the American Society for Testing and Materials (ASTM), the Department of Defense, and many state governments. Except for EPA, ASTM, and the Department of Defense, the organizations and states addressing degradable plastics issues typically are focusing more on litter and landfill capacity problems than on the risk to marine mammals or on degradation in the marine environment.

The ASTM D–20 committee (Ref. 1) has developed standards for testing degradable plastics under certain environmental conditions (including photodegradation and composting). EPA is using two ASTM tests (specifically D–5208–91 and D–3826–91) in this rule. These tests are recommended by ASTM for testing photodegradable plastic film. ASTM is working on a test to simulate and measure degradation under marine conditions which could be used to test biodegradable ring carriers under lab conditions. Because of statutory deadlines, EPA can not wait for ASTM to approve that test; therefore, we have included in this rule an *in situ* test that could be used for biodegradable ring carriers. EPA may, at a future date, review this rule to consider the effect of any new ASTM marine test.

III. Summary of the Proposed Rule

On April 7, 1993 (58 FR 18062), EPA issued a proposal in response to Public Law 100–556. The Agency proposed a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. The proposed performance standard included the same three factors in this rule's *in situ* test: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. In the proposal, EPA referred to these factors as the performance standard.

The proposed performance standard required testing in very specific marine conditions that would be more costly than the currently employed lab tests. Therefore, the proposal also allowed a processor of photodegradable ring carriers to use lab tests to check the degradation of the ring carriers as long as the lab tests were equivalent to the performance standard.

IV. Response to Comment

EPA received comments on the proposed rule from eighteen persons or groups. This section summarizes and addresses the major comments. A discussion of the remaining comments can be found in a background document available in the RCRA Docket Information Center. See the "ADDRESSES" section at the beginning of this rule for information on getting a copy of the document.

A. Definition of Terms

In the April 7, 1993 proposed rule, EPA proposed three definitions: "5 percent elongation at break", "processor" and "ring carrier." EPA received no comments on the definitions for "processor", and "ring carrier"; therefore, they remain unchanged in the final rule. In response to one comment, EPA has changed the definition for "elongation at break". In the proposed rule, EPA defined "5 percent elongation at break" as " * * * computed by dividing the length, at break, of the material before it is tested by the length of the material, at break, after it is stretched * * * " The commenter pointed out that the proposed definition incorrectly divided the original length of the plastic by the length after it has been stretched. The definition found in the final rule language corrects this error as well as defines the term to more closely resemble the ASTM definition.

EPA received many comments on the proposed rule's usage of terms

describing degradability such as: Photodegradation, biodegradation, naturally-derived plastics, and synthetic plastics. The Agency defined and used these terms in the preamble only for the purpose of discussing the issues surrounding degradable plastics; EPA does not use any of these terms in the final rule language. Therefore, regulatory definitions for those terms are not necessary.

EPA added the word "plastic" to the title of the regulation in response to one comment. The commentor expressed concern that this rule may be construed to apply to cardboard beverage carriers. EPA added "plastic" to the title to clarify the scope of this rule as set by Congress in Public Law 100–556. The definitions and requirements of today's regulation are not necessarily relevant to degradable plastics intended for other end uses.

B. Testing Degradation

After the formulation of the resin, environmental conditions are the most important factors for determining the rate of degradation. For example, a photodegradable plastic buried in a landfill will degrade at essentially the same rate as the nondegradable formula of that plastic because there is no source of light to degrade the plastic. The Statute directs the Agency to protect marine wildlife. To achieve this goal, the Agency proposed that ring carriers be tested for degradability by being exposed, "for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters." The Agency proposed that the amount of degradation could then be tested and measured, using ASTM D–3826–91, to show 5 percent elongation at break. In addition to the *in situ* test described above, the proposal also allowed processors of photodegradable ring carriers to use lab tests to check the degradation of the ring carriers (rather than a location below latitude 26 degrees North) as long as the lab tests were equivalent to the *in situ* test. In the preamble to the proposal EPA stated that, for the purpose of testing a photodegradable ring carrier, a lab test following the ASTM test D–5208–91 (using cycle A conditions for 250 light hours) is equivalent to the *in situ* test and could be used by ring carrier processors to meet the proposed regulation. EPA asked for comment on the use of ASTM tests D–5208–91, D–3826–91 and G–26.

Several commenters felt that the ASTM tests for exposure to UV and measurement of elongation at break (ASTM D–5208–91 and D–3826–91, respectively) should be required in the rule language rather than referred to in the preamble and urged that the *in situ* test (referred to in the proposal as the performance standard) should be deleted. The commenters felt that the *in situ* test was vague and not reproducible. The ASTM tests were felt to be easily implemented and reliable.

In response to these comments, EPA decided to include the ASTM tests in the final rule language as an option along with the *in situ* test. EPA decided to not require the ASTM tests alone because of the potential negative effects on future use of biodegradables or other new technology. A purely biodegradable ring carrier (if one is developed) could never pass these tests, which are based on UV absorption and photodegradation rather than biodegradation. As a result, the final rule provides that the processor of a ring carrier may choose either the ASTM lab tests (ASTM D–5208–91 using cycle A conditions for 250 light hours and ASTM D–3826–91) or the *in situ* test (i.e., expose the ring carrier for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters to degrade the ring carrier material and then use D–3826–91 to test for 5 percent elongation at break).

C. Measuring Degradation

The rate and extent of degradation typically are assessed by measuring changes in the physical properties of a material. For degradable plastics, a common method used to quantify the extent of degradation is to assess the "brittleness" of the material by measuring the amount of stress that must be applied before the plastic breaks. Brittleness can be measured in many ways, including tensile strength and the elongation of the plastic prior to breaking.

In the proposed rule, the Agency chose "elongation at break" to measure degradation. There are data that show a close correlation between the loss of elasticity (i.e., becomes brittle) and the rate of degradation. Brittleness can be used to predict the loss of physical integrity of the plastic which correlates to a reduced risk to wildlife from entanglement.

Plastic that has degraded to the point of 5 percent elongation at break will stretch only 5 percent of its original length before crumbling. The LDPE resin used to make ring carriers stretches readily. Ring carriers made from LDPE normally can be stretched to more than several hundred percent of their original length before breaking. Once the plastic material has been exposed to degrading factors, the material becomes more brittle and no longer can stretch very much before the plastic breaks. At approximately one hundred percent elongation at break, ring carriers lose their ability to function and the cans fall out of the carriers (Ref. 2).

"Elongation at break" is accepted by many in the scientific community as an appropriate method for measuring brittleness, and therefore, degradation of degradable plastics. However, some commenters interested in developing new ring carrier technology (for example, a biodegradable plastic ring carrier) expressed concern that elongation at break may not be appropriate for the new technology. Two commenters suggested the use of respirometric tests (using the evolution of carbon dioxide as a measure of biodegradation) for measuring degradation of biodegradable plastics. Respirometric tests are extremely complicated to design and run; in order to measure the carbon dioxide evolution, the experiment must be run under very controlled laboratory conditions. To EPA's knowledge, a respirometric test that reflects the marine environment has not been developed. None of these commenters provided specific suggestions or data on how EPA can measure degradation of materials other than photodegradable plastics. Therefore, EPA has decided to leave the measurement of elongation at break in the final regulation, but has included the *in situ* test as an option for any new technology that may be developed.

D. Time Limit for Degradation

The Agency is required by the statute to establish a time limit for degradation that is "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." Although it would be ideal to set a time limit that is not expected to pose any risk to marine wildlife, it is likely that some risk to marine wildlife will remain because it is not technically possible to design a ring carrier that degrades immediately upon disposal in a marine environment, but also is strong enough for its intended use (holding beverages).

The Agency investigated whether or not the material currently being used to make ring carriers, E/CO, degrades under marine conditions. EPA requested, but did not receive, any information to suggest that a faster time than measured in the EPA study (Ref. 3) could be achieved by E/CO or any other plastic product (that can also function as a ring carrier). E/CO clearly degrades when exposed to sunlight. Therefore,

the Agency has chosen a time limit for degradation that is based on the best performance observed in actual testing of the E/CO ring carriers currently in use. In a study (Ref. 3) performed by Research Triangle Institute for EPA, it took 35 days for E/CO ring carriers to reach 5 percent elongation at break in the marine environment. The testing was done during the months of June and July, off the coast of Miami, Florida. The time degradable ring carriers require to degrade is a fraction of the time nondegradable ring carriers were estimated to remain intact; therefore, the risk to marine species from degradable ring carriers will be much less than the risk posed by nondegradable ring carriers.

Some commenters felt that E/CO could not meet the requirement within the proposed time period. However, EPA has data to the contrary which is included in the docket to this rule (Ref. 3). Moreover, an E/CO processor commented that they believed E/CO could meet the proposed lab tests.

Several commenters were concerned that the performance standard would inhibit the development of new technology. Commenters also felt that EPA should allow a longer timeframe for biodegradable ring carriers to degrade than for photodegradables because of their greater environmental desirability. EPA disagrees. Although EPA understands the environmental advantages of a biodegradable carrier, the Agency believes that any biodegradable ring carrier must degrade as quickly as E/CO so as to meet the statute's goal of protection of marine fish and wildlife.

Commenters noted that states may misunderstand that the 35 day time limit hinges on testing in a warm and sunny environment. They feared that states other than Florida might require the 35 day timeframe. EPA realizes that a ring carrier that degrades in 35 days in Miami will take longer to degrade in other parts of the country. It will also take longer for a ring carrier to degrade in Miami during winter than during the summer months (seasonal variation of UV is greater than geographic variation).

By establishing the *in situ* test in § 238.30(a), the Agency does not intend to require that a ring carrier degrade to 5 percent elongation at break in 35 days in coastal waters everywhere in the United States. For example, this rule is not requiring a ring carrier be processed so that it degrades within 35 days in northern coastal waters (e.g., Maine). Such a ring carrier may not be able to be marketed nationally because it may degrade too quickly in the south during the summer and, therefore, would not be able to perform its intended function. Therefore, the Agency wishes to emphasize that the *in-situ* test is 35 days in marine conditions in a location below the latitude 26 degrees North, not 35 days in any coastal water in the continental United States.

E. Preemption of State Regulations

Over half of the states have enacted legislation requiring the use of degradable ring carriers. State requirements (Ref. 4) vary widely in timeframes for degradation, definitions of plastic articles covered, testing requirements, and degradation processes. EPA received four comments requesting that this rule preempt State regulations concerning the degradability of plastic ring carriers. Commenters expressed concern that the various state standards could force the processors and distributors of ring carriers to use more than one type of ring carrier rather than the one ring carrier currently used nationally.

EPA understands this concern and, in principle, agrees that one degradable ring carrier should provide adequate protection for fish and wildlife nationwide. However, Congress did not provide authority for this rule to preempt state regulation of degradable ring carriers. Nor does EPA believe Congress intended this rule to preempt more stringent state and local regulations.

The Agency does not intend to interfere with local, state, or other federal programs pertaining to the regulation of degradable plastics.

V. Implementation and Summary of This Final Rule

In summary, today's Final Rule requires that manufacturers and importers of plastic ring carriers test their ring carriers to ensure that they degrade. The processor of a ring carrier may choose either the ASTM lab tests (ASTM D–5208–91, using cycle A conditions for 250 light hours, and D–3826–91) or the *in situ* test (expose for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters and then, using D–3826–91, test for 5 percent elongation at break).

This rule applies to both processors in the United States and also to any person in the United States importing ring carriers. This rule does not differentiate between ring carriers processed for use in the United States and other countries because, at the time of sale to beverage bottlers, the processor has no knowledge as to where the ring carriers will be sold or used.

Each ring processor and importer must determine that its ring carrier meets this degradable performance standard using either of the tests described in today's rule, before marketing for use the ring carriers. The Agency does not intend for processors and importers of ring carriers to test each shipment of ring carriers to determine if they meet the performance standard; rather they should test the ring carrier each time the ring carrier's formulation or processing procedure changes substantially. Importers must not knowingly distribute ring carriers that do not meet this performance standard and they should seek assurance from the processors that the ring carriers meet the performance standard. If more than one processor manufactures ring carriers using the same ring carrier material and processing conditions, then they do not each have to test their own ring carrier; they may share the test data.

VI. Administrative Designation and Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review because the Agency believes the processors are able to meet these standards without changing current technology.

B. Executive Order 12875

Executive Order 12875, "Enhancing the Intergovernmental Partnership", is

intended to reduce imposition of unfunded federal mandates on state, local and tribal governments. This rule does not impose a mandate on these governments. The requirements of this rule apply solely to the plastic processors of ring carriers and do not compel any action by state, local or tribal governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This rule will affect ring carrier processors, none of whom are small entities. Small entities are not likely to enter into this market because of the requirements for expensive application equipment and quantities of materials. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, as promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

D. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VII. References

(1) Narayan, Ramani. "Development of Standards for Degradable Plastics by ASTM Subcommittee D–20.96 on Environmentally Degradable Plastics". 1992.

(2) Samaras, Peter, L. Letter to EPA, for ITW Hi-cone. August 31, 1992.

(3) Research Triangle Institute. "Weatherability of Enhanced-Degradable Plastics." Contract No. 68–02–4544. U.S. Environmental Protection Agency, Cincinnati, OH. 1992.

(4) Eastern Research Group. Current Status of State Regulations Requiring Degradable Ring Carriers. March 1992.

List of Subjects in 40 CFR Part 238

Environmental protection, Beverage ring carrier, Biodegradation, Degradable plastic, Degradability standards, Imports, Incorporation by reference, Photodegradation, Ring carrier, Waste treatment and disposal.

Dated: February 16, 1994.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulation is amended by adding part 238 consisting of §§ 238.10, 238.20 and 238.30 to read as follows:

PART 238—DEGRADABLE PLASTIC RING CARRIERS

Subpart A—General Provisions

Sec.

238.10 Purpose and applicability.
238.20 Definitions.

Subpart B—Requirements

238.30 Requirement.

Authority: 42 U.S.C. 6914b–1.

Subpart A—General Provisions

§ 238.10 Purpose and applicability.

The purpose of this part is to require that plastic ring carriers be made of degradable materials as described in §§ 238.20 and 238.30. The requirements of this part apply to all processors and importers of plastic ring carriers in the United States as defined in § 238.20.

§ 238.20 Definitions.

For the purpose of this part:

Percent elongation at break means the percent increase in length of the plastic material caused by a tensile load. Percent elongation at break shall be calculated by dividing the extension at the moment of rupture of the specimen by the initial gage length of the specimen and multiplying by 100.

Processor means the persons or entities that produce ring carriers ready for use as beverage carriers.

Ring carrier means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles.

Subpart B—Requirement

§ 238.30 Requirement.

(a) No processor or person shall manufacture or import, in bulk, ring carriers intended for use in the United States unless they are designed and manufactured so that the ring carriers degrade to the point of 5 percent elongation at break, when tested in accordance with ASTM D–3826–91, "Standard Practice for Determining Degradation End Point in Degradable Polyolefins Using a Tensile Test", after the ring carrier is exposed to, either:

(1) 250 light-hours of UV in accordance with ASTM D–5208–91," Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics", using cycle A; or

(2) 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters.

(b) The incorporation by reference of ASTM D–3826–91, "Standard Practice for Determining Degradation End Point in Degradable Polyolefins Using a Tensile Test", and ASTM D–5208–91, "Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics," was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Resource Conservation and Recovery Act (RCRA) Docket Information Center, (5305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These materials are incorporated as they exist on the date of the approval and notice of any change in these materials will be published in the **Federal Register**.

[FR Doc. 94–4369 Filed 2–28–94; 8:45 am]

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federal register

Tuesday
March 1, 1994

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR 651

Northeast Multispecies Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 931076–4052; I.D. 100193A]

RIN 0648–AD33

Northeast Multispecies Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). Amendment 5 implements conservation measures to eliminate the overfished condition of the multispecies finfish (groundfish) stocks. This final rule implements the Amendment by imposing a moratorium with exceptions for certain vessels fishing in the fishery, an effort control system to reduce fishing effort over 5 to 7 years, monitoring requirements to track fishing effort, and new permitting and reporting requirements. In addition, the rule increases minimum mesh size requirements for several different areas and expands the area where mesh size is regulated.

EFFECTIVE DATE: March 1, 1994, except for § 651.32(a), which is effective April 15, 1994. Section 651.9(a) (11) and (12), § 651.9(e) (33) and (34), and § 651.27(b) expire at 2400 hours, April 2, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097. Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Richard B. Roe, Northeast Regional Director, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252 or E. Martin Jaffe, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) approved at its June 1993 meeting a package of measures for inclusion in Amendment 5 to the FMP. The FMP has been in effect since 1986, and has been amended four times. The two main objectives of Amendment 5 are to eliminate the overfished condition of the principal groundfish stocks (cod, haddock, and yellowtail flounder) by reducing the rate at which fish are caught by 50 percent over the next 5 to 7 years, and to reduce the bycatch of harbor porpoise in the sink gillnet fishery.

Two measures contained in Amendment 5, as originally submitted, were disapproved by the Secretary of Commerce (Secretary) on September 30, 1993, and were not contained in the proposed rule to implement the amendment published on October 27, 1993 (58 FR 57774). Reasons for disapproval of those measures were given in the proposed rule and are not repeated here.

Amendment 5, less the two measures disapproved on September 30, 1993, was approved on January 3, 1994, after consideration of the comments received during the public comment period. This rule implements measures in Amendment 5 that are expected to reduce the fishing mortality rate to such a level as to eliminate overfishing. Since development began on the amendment, the condition of the multispecies finfish stocks continued to decline to record low levels. It is essential that fishing mortality levels be reduced as soon as possible because only then can rebuilding of stocks occur, especially for haddock, cod, and yellowtail flounder.

In approving the amendment, the Director, Northeast Region, NMFS, (Regional Director) notified the Council of several concerns that had been raised during Secretarial review, including that the Council needs to develop specific rebuilding goals, the annual mortality reduction may be set too low in the early years of the amendment, the effort exemption for vessels 45 ft (13.7 m) or less in length may be too permissive, that the overfishing definition for pollock may need to be adjusted, and the sink gillnet measures to reduce harbor porpoise take may not be sufficient. Also, the Council's objective to eliminate overfishing for cod and yellowtail flounder, while certainly a necessary first step, fails to offer specific rebuilding objectives for these species and the Council has been notified that it should begin formulating such objectives as soon as possible.

Incorporation of Emergency Measures Into the Final Rule

On January 3, 1994, NMFS published an emergency rule, at 59 FR 26, effective January 3, 1994, through April 2, 1994, to protect the seriously depleted stocks of haddock. The emergency rule established a 500-lb (226.8-kg) possession limit for haddock; began the closure of an expanded Closed Area II on January 3, 1994, rather than February 1, 1994; and implemented several other measures to protect haddock. This final rule implementing Amendment 5 permanently implements several measures that were contained in both the emergency rule and in the proposed rule for Amendment 5. Other measures in the emergency rule that were not contained in the proposed rule for Amendment 5 are continued in effect by this final rule, but will expire on April 2, 1994, as provided by the emergency rule, unless extended through further rulemaking. A description of these measures follows.

Definitions for "bottom-tending gillnet or sink gillnet", "dredge or dredge gear", "offload", "pair trawl or pair trawling", "scallop dredge vessel", "standard box", "standard tote", and "transfer", which were temporarily added by the emergency rule, are permanently added to § 651.2 by this final rule. Prohibitions on pair trawling in the groundfish fishery, temporarily added at § 651.7(a) (5) and (6) by the emergency rule, are permanently added at § 651.9(e)(27) by this final rule. A prohibition on transfer of multispecies finfish at sea, temporarily added at § 651.7(a)(7) by the emergency rule, is permanently added at § 651.9(e)(3) by this final rule. Prohibitions concerning haddock possession, temporarily added at § 651.7(a) (3) and (4) by the emergency rule, are permanently added at § 651.9(a) (11) and (12) by this final rule. A prohibition concerning sink gillnets, temporarily added at § 651.7(b)(15) by the emergency rule, is permanently added at § 651.9(e)(31) by this final rule. A prohibition concerning entry into Closed Area II of Georges Bank during a specified period of time, temporarily added at § 651.7(b)(16) by the emergency rule, is permanently added at § 651.9(e)(20) by this final rule. A prohibition concerning haddock possession on sea scallop dredge vessels, temporarily added at § 651.7(b)(17), and a prohibition concerning a haddock possession limit temporarily added at § 651.7(b)(18) by the emergency rule, are added at § 651.9(e) (33) and (34), respectively.

effective through April 2, 1994, by this final rule. Prohibitions concerning possession of multispecies finfish harvested by pair trawling, temporarily added at § 651.7(b) (19) and (20) by the emergency rule, are permanently added at § 651.9(e)(27) by this final rule. A prohibition concerning transfer of multispecies finfish from one vessel to another, temporarily added at § 651.7(b)(21) by the emergency rule, is permanently added at § 651.9(e)(5) by this final rule. A prohibition on pair trawling for multispecies finfish, temporarily added at § 651.20(g) by the emergency rule, is permanently added at § 651.20(h)(3) by this final rule. The closure of Closed Area I, temporarily added at § 651.21(c)(1) by the emergency rule, is permanently added at § 651.21(a) by this final rule. The closure of Closed Area II, temporarily added at § 651.21(c)(2) by the emergency rule, is permanently added at § 651.21(b) by this final rule, except that the annual closure period for 1994 is February through May, rather than January through May, as in the emergency rule. The haddock possession limits, temporarily added at § 651.28 by the emergency rule, are added at § 651.27(b), effective through April 2, 1994, by this final rule. Transfer-at-sea measures, temporarily added at § 651.29 by the emergency rule, are permanently added at § 651.30 by this final rule. Closed areas illustrated in Figure 6 to part 651, temporarily added by the emergency rule, are permanently incorporated into Figure 3 to part 651 by this final rule.

Amendment 5 Measures

Success of the amendment is largely dependent on meeting the annual fishing mortality reduction targets. NMFS is concerned that the annual targets may not be adequately protective, particularly during the first years of the plan, although it is recognized that the Council chose to minimize first year restrictions for valid socio-economic concerns. Therefore, it is more critical that the Council responds in a timely way to problems through the framework measure to ensure achievement of the amendment's objectives.

The Council has been requested to make it a priority to reexamine the exemption from effort control for vessels 45 ft (13.7 m) and less. The 45-ft (13.7-m) limit exempts a large number of vessels from effort control measures, thereby creating the possibility that the vessels may significantly reduce any gains from controls on larger vessels. Moreover, establishing a 45-ft (13.7-m) limit for vessels may create more inequities between vessels in the same port than if the minimum had been a smaller size. The Council was asked to consider measures that would prevent modification of vessels longer than 45 ft (13.7 m) to a size that would allow them to be exempt if the Council chose not to reduce the size of vessels being exempted.

The remaining overfishing definitions have been approved, but the definition for pollock needs to be reevaluated. Since the public hearings of May 1993, an assessment on pollock was reviewed and approved by the Stock Assessment and Review Committee of the NMFS Northeast Fisheries Science Center. The assessment indicates that a 25% maximum spawning potential (MSP) level is more appropriate than the 20% MSP obtained by analogy to similar species. Current (1992) fishing mortality for pollock is estimated to be 0.72, while the fishing mortality rate that would produce a spawning stock abundance amount which is 20% of the maximum spawning potential ($F_{20\%}$) is 0.65 and a fishing mortality rate that would produce a spawning stock abundance of 25% of the maximum spawning potential ($F_{25\%}$) is 0.47. Consequently, under either definition, pollock are overfished. Although the measures contained in Amendment 5 will have a collateral benefit on pollock, the Council was requested to reconsider this definition in developing Amendment 6.

The Council and the gillnet fishermen have expressed concern over the default harbor porpoise protection measure. The Council requested, at its February meeting, that implementation of the 4-day blocks out per month for gillnet gear be delayed until April 15, 1994, because it appears unlikely that harbor porpoise will be present in significant numbers until then. Others commented that when significant numbers of porpoises are present, the 4-days out of the fishery per month requirement may not be adequate to protect the porpoises. The final rule makes the 4-day out provision effective April 15, 1994. The Council is requested to take swift action under the harbor porpoise framework measure to ensure the protection of porpoise through the continued examination of the time and area of the gear-out requirement, and if necessary to protect porpoise, to change the provision.

The permit moratorium contained in Amendment 5 continues to be contentious. It becomes even more so as other fisheries establish control dates that some perceive as limiting the options available to fishermen. The Council was asked to work closely with the Mid-Atlantic Fishery Management Council to insure that fishermen continue to have alternatives available, such as the mackerel fishery, which is underexploited and can withstand additional effort. The control date established for the Atlantic mackerel, squid and butterfish fisheries may prevent this fishery being an option for groundfish vessels and the Mid-Atlantic Council was asked to consider this and work with the Council before developing final measures.

This final rule implements: A moratorium on most new entrants into the multispecies finfish fishery; limitations on upgrading of vessel size and engine horsepower; exceptions to the moratorium for vessels using fewer than 4,500 rigged hooks or fishing under a possession limit; an effort-reduction program where vessels fish using a combination of blocks of time out of the fishery and time spent at the dock (Fleet Days-At-Sea(DAS)), unless they elect to take an allocation of actual Individual DAS that vessels may fish for multispecies finfish; exceptions to the effort-reduction program for vessels 45 ft (13.7 m) and less in length, vessels fishing fewer than 4,500 hooks, vessels fishing sink gillnet gear, and vessels at sea for less than a day; a possession limit for scallop dredge vessels; a requirement to purchase and install a Vessel Tracking System (VTS) unit for vessels fishing Individual DAS and vessels that have historically fished with a scallop dredge and otter trawl; a call-in system for other vessels in the Fleet DAS reduction program; a minimum mesh size of 5 and 1/2 inches (13.97 cm) in the Southern New England/Mid-Atlantic area; an increase in the minimum mesh size in the Gulf of Maine/Georges Bank area from 5 and 1/2 (13.97 cm) to 6 inches (15.24 cm); exceptions to the mesh-size regulations for vessels possessing less than the possession limit, and for vessels fishing with purse seine or midwater trawl gear; minimum fish sizes; a prohibition on pair trawling; seasonal mesh requirements in the Stellwagen Bank/Jeffreys Ledge area; a suspension of the closure of Area I except for fixed gear; a modification of Closed Area II in area and time; a closure of an area in the vicinity of the Nantucket Lightship when a research trawl survey index is reached; a requirement that vessels fishing for northern shrimp use a finfish excluder device; permit requirements for vessel operators and dealers; mandatory reporting for permitted vessels and dealers; mandatory observer requirements for vessels if required by the Regional Director; and framework measures to adjust the effort-control program and other measures.

Permit Changes and Applicable Dates

This rule substantially changes the fishing vessel permit application process. Vessel owners must now choose from several different permit categories. This choice will have implications on the future activity of a vessel. The permit category requirements and restrictions are complex and the applicants acting in anticipation of the final rule have been reluctant to choose a permit category, until they have discussed the implications with NMFS. Because of the volume of calls and requests for assistance received from the industry, NMFS has been unable to provide assistance to all those requesting it. To allow additional time for applicants to complete their vessel permit applications, the vessel permit requirement, and related measures, such as effort control measures and possession limits, become applicable on May 1, 1994. To be ensured of having a vessel permit by May 1, 1994, completed vessel permit applications must be received by NMFS by March 31, 1994. Applications received after March 31, 1994, cannot be guaranteed to be processed before May 1, 1994. Until these provisions of the regulations become applicable, vessels holding 1993 multispecies permits can fish for, possess or land multispecies in or from the EEZ.

This change will allow NMFS to continue to provide assistance to the industry so that the industry can make informed choices in a timely way on these important decisions. To further assist the industry, the Regional Director intends to allow vessel owners who believe they mistakenly chose a permit category based on incomplete information, to change permit categories within 30 days of receipt of their 1994 Federal multispecies permit. This change must be requested in writing and is in addition to the one change in category allowed under § 651.4(f)(2)(iv).

The Regional Director has determined that monitoring of vessels in the Fleet DAS reduction program will be accomplished initially through the call-in system. NMFS has reviewed several card monitoring systems to determine their appropriateness for this application. NMFS found that while these systems may serve the need, their cost, reliability, level of sophistication, and the relative newness of the technology make implementation difficult. The Regional Director does not believe that such a system could be made operational by the time of implementation and therefore has reserved the card monitoring system.

In addition, the Regional Director has authorized, pursuant to § 651.29(c), the use of the alternative call-in system as the sole method of notification for the DAS program. Until the Regional Director determines that the VTS is operable and he has provided adequate notification to permit holders, vessels participating in the DAS program must use the call-in system to provide notification of when they are leaving for and returning from fishing trips.

Comments and Responses

Written comments were submitted by Alliance for Community Education, Associated Fisheries of Maine, Center for Marine Conservation, City of Gloucester Mayor-elect Bruce H. Tobey, Commercial Fisheries News, Conservation Law Foundation, East Coast Fisheries Foundation, Inc., Gloucester Fishermen's Wives Association, Gloucester United, Maine Fishermen's Cooperative Association, Maine Gillnetters Association, Marine Mammal Commission, National Italian American Foundation, New England Fishery Management Council, North Shore Chamber of Commerce, Inc., Portland Fish Exchange, Senator George Mitchell, U.S. Coast Guard, and 18 individuals. In addition, letters containing 461 signatures were submitted in support of the Gloucester United comments.

Four VTS vendors provided comment on the proposed monitoring requirements under which they would be certified.

Comment 1: Three associations and four individuals stated that the amendment should be approved.

Response: The comments have been noted and the amendment has been approved.

Comment 2: One association expressed its support for an overall catch quota to ensure populations are not overfished in case measures to limit days at sea are not successful in reducing the amount of fish caught.

Response: The Council did not include overall quotas out of concerns that include possible market disruptions that could result when a quota is caught, small boats and large boats having to compete against each other for available quota, and the difficulty in monitoring quotas among different areas. Instead of an absolute quota, the Council chose the annual harvest targets to be used to gauge progress towards attaining the interim mortality reduction targets. NMFS and the Council are required to perform an annual review to determine what the actual mortality rate is compared to the harvest targets. Rather than quotas, the Council will then be able to modify the other measures contained within the amendment by using the framework to ensure that the targets are not exceeded in future years.

Comment 3: One association expressed concern about NMFS' ability to administer and enforce the amendment and recommended that NMFS enlist the advice of the Council and experienced members of the fishing industry.

Response: Most of the planning for implementation of the amendment and its administration and enforcement has already been done. NMFS will continue to work with the Council to address problems as they arise and will solicit industry advice when appropriate.

Comment 4: One association commented that Amendment 5 will provide further restrictions on small- and medium-sized vessels that are already limited by weather. Vessels will be forced to fish in bad weather and lives will be lost.

Response: The Council, in deliberating the amendment, made a conscious decision to reduce the impacts on small vessels. The possession limit exemption and hook exemption from the permit moratorium, and the 45-foot and day-trip exemptions from effort control were designed with the small and medium sized vessels in mind. Vessels outside these categories will be affected by the combined measures. Whether these vessels will decide to fish in bad weather is unknown, but the Council believes that other factors such as declining stock abundance and the competition for scarce catches are more likely to influence such a decision. NMFS, in approving this amendment, agrees with the Council's conclusions.

Comment 5: One association commented that Amendment 5 measures urge fishermen to go into alternative fisheries. This will be difficult because it costs money to get into a new fishery and banks and lending institutions are hesitant to lend money. Larger vessels that use up their groundfish days will have to resort to small-mesh fisheries to survive.

Response: The declining state of the groundfish resource makes it increasingly difficult to make a successful trip. Vessel owners facing such a decline would normally consider alternatives to groundfish, which the amendment's measures support. A switch to a new fishery may mean a capital investment in new gear. The amendment makes no distinction regarding which vessels may be able to switch to other fisheries and it imposes a consistent possession limit on all vessel size classes when small-mesh

gear is used to lessen the impact on groundfish. Using the framework measure of subpart C, the Council may adjust these measures if it determines that there is a problem.

Comment 6: Six associations and seven individuals recommended that the Secretary enter into negotiated rulemaking under the Negotiated Rulemaking Act of 1990 instead of implementing the moratorium, DAS, and target quotas.

Response: The responses to the recommendation to disapprove the moratorium, the DAS provisions, and target quotas are provided under Comments 7, 35, and 36. Development of fishery management plans and amendments must adhere to procedures provided for in the Magnuson Fishery Conservation and Management Act (Magnuson Act), which established fishery management councils and the development of fishery management plans to ensure public participation by the affected public in the process, similar to the intent of the Negotiated Rulemaking Act. The Magnuson Act development process for Amendment 5 involved active public participation throughout. At its Multispecies Committee and Council meetings, the Council provided ample opportunity and encouraged the public's development of alternative management measures. At the two rounds of public hearings, which were well attended by the fishing industry, several alternative management plans were proposed. Most were analyzed against the Council's objectives and many of the measures proposed were adopted by the Council. Several of these had to be adjusted to ensure that they would meet the amendment's objectives.

Because of the public process that has already occurred, and the many opportunities for comment, there was no need for a negotiated rulemaking. The Council may not have decided on measures favored by all in the fishing industry, but it is the Council's responsibility to exercise its best judgement on what is necessary and appropriate for the fishery under its jurisdiction.

Vessel Permits/Limited Entry Permits

Comment 7: Six associations and eight individuals recommended that the moratorium on vessel permits be disapproved. The commenters stated that the moratorium is not based upon conservation, will change the character of the industry leading to corporate ownership, is irreversible, and was rejected by the fishing industry at public hearings.

Response: A moratorium is important to the effort reduction program because it enhances the predictability of the effect of effort reductions on total mortality and it reduces the impact of the effort reductions on individual participants. To insure some control on the predictability of the effort reduction program, a finite number of units of effort, i.e., fishing vessels, is necessary. Otherwise, the size of the reduction in fishing mortality could not be predicted and would not be known until after the effect of the new vessels that had entered the fishery could be measured. Consequently, the Council would always be playing catch-up with little likelihood of success.

A moratorium is important to controlling the magnitude of the impact of effort reductions on individual participants in the fishery. Without a moratorium, new vessels could continue to enter the fishery. If this occurred, individual vessel time at sea would have to be reduced to compensate for the increase in total time at sea. During the rebuilding program, this would increase the magnitude of the individual reductions in effort proposed and, as the resource improves, even more vessels would be encouraged to enter and any individual gains associated with the improvement in the resource would be dissipated. The unpredictability of future individual reductions would contribute to economic instability in the fleet and the inability of participants to plan for the long term.

The Council proposed the moratorium to ensure long-term gains for those individuals being forced to make short-term sacrifices in the form of effort controls. As the effort control measures achieve fishing mortality reductions and the resource starts to rebuild, new entrants into the fishery would likely harvest the surplus in the absence of a moratorium. Thus, there would be no promise of a "return on investment" for the vessels that are making the sacrifices in the early years of the plan. Moreover, a moratorium provides an incentive to participants to protect their long-term interests. This translates into increased protection for the resource. Effort control measures without a moratorium are less likely to provide conservation benefits because an important restriction on the expansion of total effort would have been eliminated.

It is unknown whether the moratorium will change the character of the industry. It is difficult, if not impossible, to predict the individual vessel's decisions and the circumstances leading to those decisions that would be made to allow such a wholesale change.

The Council allowed for some new entry to the fishery through the use of the 4,500 hook and possession limit exemptions. In providing these exemptions, the Council determined that these activities would not have a significant impact on attaining the goals and objectives of the amendment. These exemptions and the moratorium itself can be reviewed and modified in future years if the Council determines that there is need and that the amendment's objectives could still be met. The Council has also stated its intention that the moratorium be effective only for the duration of the effort reduction program established by this amendment.

While there was some support for the moratorium at the public hearings, the primary rationale for approval is its relationship to the effort reduction program. Absolute acceptance by the industry for a measure, though desired, is not the sole criteria on whether a given measure should be approved.

Comment 8: One association commented that, in § 651.4, the eligibility criteria for a limited entry permit and conditions for upgrading are very similar to those promulgated in the original Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. With that plan, all the participants agreed that the tendency of the standards was to encourage an "arms race," which consumed capital and complicated effort reduction objectives for years. This should be avoided if possible.

Response: Some of the language and requirements for moratorium permits are similar to those contained in fishery management plan for the Mid-Atlantic surf clam fishery. The Council was aware of the problems experienced in that fishery, because it was consulted and involved in the development of the plan for that fishery. Many of the conditions that occurred in the Mid-Atlantic surf clam fishery after implementation of the moratorium have already occurred in the multispecies fishery. In the multispecies fishery, similar to what happened in the surf clam fishery, there has been a rapid rise in fishing effort brought about by several factors, including longer trips, shorter turnaround time between trips, and increased technology making fishermen more efficient. The Council, therefore, attempted to minimize problems in Amendment 5 by allowing some flexibility in limitations on size and horsepower and by adopting a framework measure to facilitate adjustments to measures.

Comment 9: One association commented that, in § 651.4(q) of the vessel permit requirements, the

provision that a limited access permit is forfeited if not annually renewed is likely to cause fishermen to lose their license permanently because of a technicality. Either an annual renewal notice or other flexibility should be incorporated to avoid serious hardship claims.

Response: Since the inception of annual permit renewals in 1986, NMFS has sent annual permit renewal applications to those issued permits in the previous year. This practice will not change with the implementation of this amendment. However, it will continue to be the vessel owner's responsibility to have a valid Federal Fisheries Permit, maintained on board the vessel, before engaging in fishing for multispecies finfish.

Comment 10: One association questioned whether the restriction on issuance of limited access permits, contained in § 651.4(s) of the vessel permit requirements, meant that a vessel in this fishery could not enter other fisheries. If this is the case, then the commenter stated it would be a clear violation of national standard 6.

Response: Vessels may enter, and are encouraged to enter, other fisheries, so long as they meet the criteria for entry to those fisheries. The section cited does not limit a vessel from entering other fisheries; rather, § 651.4(s) specifies that the permit or fishing history of one vessel may not be used to qualify another vessel at the same time in some other fishery. This means that if the vessel had permits for several fisheries in the past and was still qualified for those fisheries, the permit or history could not be used to qualify a different vessel for another limited entry fishery, and at the same time qualify for a limited access multispecies permit.

Comment 11: One individual expressed support for the hook exemption and requested adoption of a similar exemption for fish traps. The commenter stated that both conserve the stock and fish habitat, and reduce fuel consumption.

Response: A specific exemption for fish traps was not considered by the Council for inclusion in the amendment. This comment is being forwarded to the Council for possible inclusion of a fish trap exemption in a future amendment.

Comment 12: One association supported the moratorium, but opposed the issuance of new permits after only 3 years.

Response: After 3 years, the Council may adjust the criteria for limited entry permits after taking into consideration the fishing mortality goals and objectives of the amendment and conditions in the fishery. This would be accomplished through the framework measures contained in subpart C, which include opportunity for public comment.

Comment 13: One association objected to the requirement for a vessel permit in § 651.4(f)(1), which requires that the names and addresses of shareholders holding more than 25% ownership be provided. The commenter believed that this is an invasion of privacy, is not required by other government agencies, and that the officers of a corporation are a matter of record.

Response: By receiving this information, NMFS will be able to determine who the true owner of a vessel is. It gives a more complete picture that is not available when a vessel owner provides just the corporation name. This is particularly important when determining who is responsible if a violation of a regulation occurs. Without this information, determining whether a particular owner is a repeat violator would also be difficult. To seek this information from other sources would require systematic searches of state records, requiring NMFS to expend an extensive amount of time. It is not an unlawful invasion of privacy because it is only required of vessel owners that voluntarily submit themselves to the highly regulated industry of fishing as a condition to obtaining the privilege to fish with a Federal permit in Federal waters.

Operator Permits

Comment 14: One association commented that, in § 651.5(d) of the operator permit requirements, the requirement for passport photos to be submitted with an application for an operator permit probably adds several hours to the information burden calculation for each applicant under this program, which is not accounted for in the analysis.

Response: The requirement is not for passport photos, but rather passport-size photos, which makes the requirement substantially easier to meet. Regardless, the analysis did take this into account and allowed for 1 hour for response instead of 5 minutes, for example, as specified for applying for a dealer permit. In determining burden estimates, an average is taken.

Some individuals will already have a passport-size photo or have easy access and their burden will be minimal. Other individuals may have to travel to have this service performed. The burden is further reduced by NMFS' intention to allow the operator permit to be valid for multiple years, rather than just 1 year. In any event, the estimate of time does not pose any time constraints on applicants. NMFS will monitor whether the time estimate is correct.

Comment 15: The U.S. Coast Guard commented that the wording under § 651.5(c) in the operator permit requirements, which prohibits operators who have had their operator permit suspended or revoked from being on board a vessel, in any capacity, issued a Federal Fisheries Permit is unenforceable unless all crew members are permitted.

Response: NMFS disagrees that the measure is unenforceable. The intent of this measure is to improve compliance with the measures by those who are most directly able to control the actions of the vessel and crew. The number of operators having their permits suspended or revoked is expected to be relatively few. Information on these individuals, including their picture, can be distributed to the U.S. Coast Guard and other enforcement officials and used during boardings. To require all crew members to obtain a permit would impose too great of an administrative burden on NMFS and crew members for which there would be insufficient improvement in the ability to enforce such a measure. Further, a change such as this is beyond the scope of Amendment 5.

Comment 16: The U.S. Coast Guard commented that § 651.5(d) should require proof of U.S. citizenship to obtain an operator permit.

Response: The Magnuson Act requires that all vessels of the United States that are larger than 5 net tons be documented by the U.S. Coast Guard. Federal law requires that the masters of U.S. documented vessels be U.S. citizens or U.S. nationals. As applied to vessels larger than 5 tons, the Coast Guard's suggestion is duplicative of existing law. As applied to vessels smaller than 5 tons, the adoption of a U.S. citizenship requirement would prevent aliens lawfully admitted to permanent residence in the United States from continuing to serve as masters of small vessels as they endeavor to qualify for U.S. citizenship. For these reasons, NOAA has not adopted the U.S. Coast Guard recommendation.

Comment 17: One association noted that the operator permit requirements in §§ 651.5 and 651.9 are inconsistent with the amendment by failing to exempt recreational vessels.

Response: The intent was to require operator permits for operators of vessels required to obtain federal fishery permits. The final rule provides that if a vessel is exempted from the vessel

permit requirements, then that vessel's operator is exempted from the permit requirement as well.

Comment 18: One association objected to the operator permit condition under § 651.5(c), which prohibits vessel operators from working on board a vessel issued a Federal Fisheries Permit, in any capacity, if the operator permit has been revoked or suspended.

The commenter further stated that guilt should be determined first, and the penalty determined by the Courts, rather than the penalty being agreed to first.

Response: This penalty would be assessed against a vessel operator only if the vessel operator is determined to have been involved in a major violation or is a significant repeat offender of Federal fishing regulations. In all cases, the vessel operator will have an opportunity for a hearing before an administrative law judge. Further, the vessel operator will always have the option of appealing the determination by the agency to a Federal court. The language gives notice to the vessel operator that his/her right and privilege to operate and serve on a federally-permitted fishing vessel is subject to the condition, and that the right may be suspended or revoked in certain circumstances. Without the possibility of suspending or revoking an operator's right to serve in any capacity on a federally-permitted vessel, the purpose of requiring operator's permits would be meaningless. The language also puts the operator on notice that he/she will be responsible for his/her actions and will not be able to move to another vessel, should a suspension occur. It is consistent with a vessel permit suspension, which takes the vessel out of the fishery during the time of suspension.

Reporting and Recordkeeping

Comment 19: One association commented that, in § 651.7(b)(1) of the reporting requirements, the requirement to provide "any other information required by the Regional Director" is overbroad, a standardless delegation, and potentially unconstitutional.

Response: This requirement provides NMFS the flexibility to obtain the information necessary for management, and is not open-ended, since the Regional Director must demonstrate that any additional data requested is necessary to manage the fishery.

Comment 20: One individual stated that the requirements for recordkeeping and reporting are impracticable, of little or no use, and cannot be enforced due to limited resources.

Response: The recordkeeping and reporting requirements are in direct response to the inability to collect complete information under the existing voluntary system and were supported by the fishing industry. The Council's previous attempts at management measures were stymied by the lack of complete information on the fleet. For some areas or classes of vessels, there was little coverage or incomplete coverage. The information collected from the reporting requirements is necessary to, and will be used to monitor, the effects of the various measures being implemented by this rule. Implementation of this rule, along with recent amendments to the Summer Flounder and Atlantic Sea Scallop Fishery Management Plans, will provide for a comprehensive collection of fishery information coastwide. Its requirements can be enforced because of the ability to verify reporting compliance due to the dual requirement that dealers and vessels must report. These requirements have been shown to be enforceable in other fisheries in the Northeast.

Comment 21: One association commented that the reporting burden estimates for the vessel logbook report (5 minutes), dealer logbook report (2 minutes) and operator permit (1 hour) are unrealistic and that they fail to take into account time to read instructions, search existing data sources, gather and maintain the data needed, and complete and review the requirement.

Response: Initially, the time to complete the requirements will be longer than that estimated. As fishermen and dealers become familiar with the report form and requirements, the time to complete and submit the information will decrease. The reporting time estimates for both the vessel and dealer may seem low, but the estimates take into account that most of the information is being collected during the normal course of business and in many cases for dealers, on the same form that is being adopted for the reporting requirement. The report estimates also take into account that the reporting burden will vary between areas and fisheries. Moreover, as stated above, the time estimate does not impose time constraints on those required to report. NMFS will continue to monitor this activity to determine if adjustments to the associated burden time need to be made. NMFS encourages vessel operators and dealers to submit information on the time needed to comply with these reports as such individuals gain experience actually completing logbooks and permit forms.

Vessel Identification

Comment 22: The U.S. Coast Guard commented that the wording under § 651.8(a) regarding vessel identification should be reworded to require the name on each side of the bow and the name of the vessel and homeport at or near the stern. The U.S. Coast Guard further commented that term "if possible" be deleted to eliminate ambiguity.

Response: NMFS has proposed consolidating requirements common to Northeast fisheries in 50 CFR part 622, Northeast Region General Fisheries Permit and Reporting Procedures (58 FR 53172, October 14, 1993). Where this comment is common to requirements in other fisheries, it will be considered in the context of part 622. A final rule implementing consolidated permitting and reporting procedures will be issued after this final rule implementing Amendment 5 is published.

Prohibitions

Comment 23: One association commented that, regarding the prohibition specified in § 651.9(a)(6), it is unreasonable to expect fishermen to enforce the FMP by demanding to see dealer licenses, given the locus of market power in sale transactions, and considering fishermen often have no direct contact with their dealer (i.e., fish are picked up by truck). It would be impossible for fishermen to make the legal conclusion that the permit is "valid."

Response: It is reasonable to expect that fishermen know to whom they are selling their fish, because this information is necessary to know from whom to expect payment. Further, since fishermen must provide this information on the vessel logbook submitted to NMFS, vessel owners will have to make an effort to identify to whom they are selling fish. NMFS will make an effort to identify those permitted dealers purchasing multispecies finfish so that the likelihood of a fishermen selling to an unpermitted dealer will be substantially reduced. If fish are sold to a truck, the truck does not need to be permitted if the truck is used for transportation only. If the truck driver acts as a purchaser, a dealer permit would be needed.

Comment 24: Two associations commented that observer requirements in § 651.0(a)(10) were not disclosed at public hearings. Requiring provision of food, etc., is an uncompensated taking in violation of the Constitution.

Response: Observer requirements have been part of the FMP since implementation of Amendment 4 and were discussed by the Council in public

meetings. In Amendment 4, vessels participating in the Exempted Fisheries Program were required to take a sea sampler if requested by the Regional Director. In the version of Amendment 5 taken to public hearing, observer requirements were included under the midwater trawl exemption. Once the public hearings had concluded, the Council discussed in a public meeting and added the measure to provide consistency with a measure in Amendment 4 to the Fishery Management Plan for Atlantic Sea Scallops. By including the requirement in the proposed rule, the public has been given additional opportunity to comment.

This provision is needed to supplement, rather than replace, the existing Domestic Sea Sampler Program. Several times in the past, when management actions were contemplated, the reaction by some fishermen has been to deny sea sampler's requests to be on board vessels. This seriously hampers NMFS' ability to collect discard, bycatch, and other biological information and as a consequence, management actions were based upon incomplete, though best available, information. This provision will allow the Regional Director to require vessels to carry an observer, if vessels refuse to take sea samplers.

A mandatory observer program is necessary for the management program to be effective. A taking occurs if a regulation denies an owner economically viable use of his/her property. The regulations do not dispossess fishermen or limit the use of their property. It is not equivalent to a seizure of their property or a restraint on entry and use, and therefore does not constitute an unlawful taking.

Comment 25: One association commented that, in § 651.9(b)(2)(i), the requirement for having a certified, operational and functioning VTS unit on board the vessel at all times will force fishermen to have at least two of these units on board the vessel at all times, at a cost of $14,000. No provision has been made to enable fishermen to keep information confidential from third parties with receivers. The VTS has evolved into a complicated, prohibitively expensive, intrusive violation of basic constitutional principles and an end to itself instead of providing NMFS with bare-bones requirements to make the management program work simply and effectively.

Response: The requirement is to have a functioning VTS unit on board the vessel. If the vessel owner believes that the VTS unit is not reliable enough to provide the service required, the vessel owner may decide to purchase another VTS unit. The minimum VTS performance criteria were developed with the rigors of at-sea conditions in mind. The approved VTS vendors have stated that their units meet these specifications. Many of the units are in use on board fishing vessels already and have been found to be reliable and able to withstand weather at sea.

Fishermen subject to the VTS requirement are expected to purchase the units directly from approved vendors. In making such a purchase, the vessel owner should decide whether to include in the purchase contract items such as confidentiality of information, position integrity, etc. NMFS does require that a vessel owner applying for a limited access permit must provide NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessel's DAS and location data. All information from the VTS units forwarded to NMFS will be considered data submitted pursuant to 16 U.S.C. 1853(a)(5), which is subject to the confidentiality requirements of 16 U.S.C. 1853(d).

NMFS disagrees with the last comment. The VTS was developed to address the need to monitor effectively basic vessel activities at substantial savings to NMFS. The VTS allows enforcement resources to be deployed where most effective while at the same time monitoring is maintained throughout the fishery. The VTS also provides greater efficiency for vessel operators and greater safety for at-sea operations. Further, the requirement to carry a VTS unit is a condition to participate in a highly regulated industry operating in federally regulated waters. There is no compensable taking of private property under the Fifth Amendment of the Constitution.

Comment 26: One association commented that, in § 651.9(b)(10), the trip notice provision is cast without a negative and thus would make all fishermen violators.

Response: This has been corrected in the final rule.

Comment 27: One association commented that the provision in § 651.9(e)(13) is far too broad and makes no allowance for the rigors of the sea, the vagaries of atmospheric transmission, etc. The fisherman becomes a guarantor of perfect airwaves, which is an impossible burden.

Response: The prohibition refers to a willful act, rather than that which would occur through weather or other Acts of God. The burden will be on NMFS to show that such a willful act has occurred.

Comment 28: An industry association commented that, in § 651.9(e)(31), the requirement that any fisherman must remove from the water sink gillnets is directly in conflict with Magnuson Act prohibitions on hauling or tampering with gear of others.

Response: The final rule has been changed to clarify that a sink gillnet fisherman is required to remove only his or her own gear.

Comment 29: One association commented that in § 651.9(e)(23), recreational vessels are allowed to possess regulated species smaller than the minimum size, which is contrary to Council intention.

Response: The language of § 651.9(e)(23) allows vessels exempted under § 651.9(e)(1)(ii) to be exempted from the requirement. Vessels under this exemption are those fishing in state waters exclusively, without Federal permits, where these regulations are not applicable because of the Councils' and the Secretary's limited authority under the Magnuson Act to regulate fishing activities that occur only in state waters. The Magnuson Act was enacted pursuant to the Constitution's grant of authority to Congress to pass laws that regulate interstate and foreign commerce. The Act authorizes the Secretary to issue such regulations as are necessary and appropriate to implement the Act. The Secretary has determined that keeping track of the location of fishing vessels is essential to conserve and manage the multispecies fishery. A VTS allows the Secretary to ascertain the vessel's location in a cost-effective manner.

Regulated Mesh Areas

Comment 30: One association supported the finfish excluder device requirement contained in § 651.20(a)(3)(ii).

Response: The comment is noted and the measure has been approved.

Comment 31: One association commented that it supported the increase in minimum mesh size to 6 inches (15.24 cm), but that the area should also include Southern New England.

Response: The Council specified different minimum mesh sizes, by area, based upon the different historical fishing patterns that occur there. Prior to this amendment, much of the Southern New England area was not subject to mesh restrictions. Amendment 5 imposes a minimum mesh size restriction throughout the area, thereby providing substantial protection for undersized, immature groundfish. In year 2, the mesh size increases to 6-inch (15.24-cm) square mesh or 5½-inch

(13.97-cm) diamond mesh. Also included in the measures applicable to the Southern New England Area is an area closure triggered when there is an incoming year class of yellowtail flounder that reaches a certain level of abundance as determined by the annual spring bottom trawl survey conducted by NMFS. If further restrictions are necessary, the Council may use the framework measures contained in subpart C to effect changes.

Comment 32: The U.S. Coast Guard commented that the area defined in § 651.20(c) for the Southern New England Regulated Mesh Area (RMA) and its allowance of more than one mesh on board overlaps the boundaries of the Nantucket Lightship Closed Area. The U.S. Coast Guard stated that this creates an enforcement policy that is inconsistent with conservation goals. It recommended that the Southern New England RMA be redrawn to exclude the Nantucket Lightship Closed Area from the more than one mesh on board provision.

Response: The Nantucket Lightship Closed Area closes only when a survey index indicates a strong incoming year class of yellowtail flounder. When such a closure occurs, vessels are prohibited from fishing in the area unless specifically exempted, and the gear types exempted (lobster pot gear, surf clam/ocean quahog dredge gear, hook and line) do not include gear subject to the gear stowage requirement. It is not necessary, therefore, to redraw this area such as was done for the Nantucket Lightship Regulated Mesh Area.

Comment 33: One association commented that it is inappropriate to allow mid-trawlers year-round, unsupervised access to the Gulf of Maine.

Response: Midwater trawlers are subject to a possession limit when fishing with small mesh and are required to fish with the net off the bottom. If NMFS believes that a problem is occurring with this fishery, observers could be deployed to gather information. The vessel reporting requirements will also aid in determining whether this gear is appropriate for use in this area.

Comment 34: One association recommended that the Nantucket Lightship Regulated Mesh Area be disapproved because the area allows smaller mesh size in an area that abounds with haddock, cod and yellowtail flounder.

Response: NMFS is also concerned about this area and about the confusion that can result because of the differences between the adjoining regulated mesh areas and this area. If this requirement were disapproved, however, it would leave this area with no regulated mesh size or one mesh on board requirement. NMFS is requesting the Council reexamine this area and determine whether it is appropriate to allow the smaller minimum mesh size, given the low stock abundance of regulated species occurring there.

Closed Areas

Comment 35: One association commented that, in § 651.21(b)(4), the exemption allowing safe haven in the vicinity of Closed Area II, required for vessel safety, is virtually unattainable. It depends on the National Weather Service (NWS) identifying adverse conditions far out at sea, posting warnings, and the operator being able to contact a U.S. Coast Guard unit in the area. Unless this provision is rational, it will cost lives in transit.

Response: The exemption was requested by fishermen at a meeting of the Council. The criteria for the exemption were developed to ensure that it could not be used to circumvent the regulations. The intent is that when there is a legitimate need, because of bad weather, to seek shelter in deeper water, vessels can enter the closed area. The best criterion for vessels to know when this is allowed is the storm postings of the NWS, which has offshore monitoring capabilities. NMFS is actively discussing with NWS and the National Ocean Survey, the possibility of using the VTS units to collect weather information for offshore areas. If vessels cannot contact a U.S. Coast Guard unit in the area, notice should be provided to a U.S. Coast Guard shoreside facility. NMFS believes these measures are reasonable and adequate to provide vessels a safe route during bad weather. This exemption will be monitored and, if adjustments are needed, they can be made through the framework measures in subpart C.

Effort Control Program

Comment 36: Six associations and eight individuals recommended that the effort control measures be disapproved, citing that this type of management will not achieve conservation because vessels will fish longer, fish closer to shore, target high value species, and the program will be almost impossible to administer and enforce.

Response: The Council chose effort reduction measures rather than relying solely on indirect measures (minimum mesh size, minimum fish size) or other direct measures (vessel or total quotas). In doing so, it believed that the effort control measures would provide greater assurance in achieving the Council objectives, would be less disruptive to the supply of groundfish, and would provide flexibility to vessel operators, thereby balancing the need to prevent overfishing with socio-economic concerns of the fishing industry.

With declining fish stocks, fishermen are already making longer trips with fewer crew members and with less time at the dock between trips. There have already been complaints over the last few years of larger vessels displacing small vessels by working inshore areas. The combination of annual reduction of days at sea allowed, regulated layover time at the dock, and target quotas is designed to meet eventually the objectives of the amendment. It is recognized that there will be adjustments by the fleet in the first few years. Eventually these adjustments will be overcome by the measures resulting in reductions in fishing mortality.

NMFS believes that the effort reduction program can be administered and enforced. Tracking of days at sea can be accomplished shoreside rather than at sea and the VTS and call-in systems will enhance this effort. The VTS system will identify when vessels leave port, when they return to port, which port and where they are at sea. The exemptions for hook vessels, possession limit vessels and vessels 45 ft (13.7 m) and less will substantially reduce the enforcement and monitoring burden.

Comment 37: Six associations and eight individuals recommended that the target quotas be disapproved.

Response: To determine how effective the effort reduction program and other measures are at attaining interim fishing mortality goals and to provide the industry and the public with a quantifiable objective, the Council included target quotas based upon the major groundfish stocks. The target quotas will be determined annually and, if exceeded, the Council will adjust fishing mortality reduction measures to help assure that it does not occur again. If the target quotas had been disapproved, NMFS the Council would have had little information on which to judge the success of individual measures for a given year, and little justification for adjusting management measures in future years. Exceeding a target quota does not result in any automatic regulatory measure.

Comment 38: The Council and one association commented that the layover day requirement specified in § 651.22(c)(1)(ii) should reflect the Council's intent that vessels need to move between docks within port.

Response: In order to monitor effectively vessel DAS activity, it is

necessary for NMFS to be able to track vessel movement. NMFS intends to allow some reasonable movement within port through enforcement discretion, so long as it does not compromise the accurate monitoring of vessel DAS.

Comment 39: One association commented that the provision in Amendment 5 exempting vessels 45 ft (13.7 m) or less, from the effort reduction program, should be changed back to 30 ft (9.1 m), because the longer length allows for too much additional fishing effort.

Response: An exemption length of 45 ft (13.7 m) exempts 1,554 more vessels than would an exemption length of 30 ft (9.1 m). Still, if the 45-ft (13.7 m) exemption was disapproved, there would have been no exemption for smaller vessels from the effort control program. A lack of an exemption from the effort control program for smaller vessels, may have serious negative economic effects on fishermen operating those vessels without sufficient commensurate benefits to the groundfish stocks to justify the lack of such an exemption. The Council has been asked to reexamine the 45-ft exemption, and its effects will be closely monitored. If a change is necessary, it could be implemented through the framework provisions of subpart C.

Minimum Fish Sizes

Comment 40: The U.S. Coast Guard commented that, in § 651.23(d)(i), the minimum fish sizes are only enforceable if the whole fish can be measured. The exception allowing 25 lbs (11.3 kg) of fillets less than the minimum size should be deleted since enforcement officers cannot verify that the fillets originated from legal-size fish.

Response: The 25 lbs (11.3 kg) of fillets allowed per person cannot be offered or intended for sale, trade, or barter. While NMFS agrees that it will be difficult to enforce this requirement, the small amount of fillets allowed and the intended use of the fillets should have a minimal impact on the conservation goals of the FMP. This exemption allows the traditional fishing practice of crew members filleting fish for personal use to continue. If this exemption poses a problem in the future, it may be modified using the framework provisions of subpart C.

Flexible Area Action System

Comment 41: One association commented that the FAAS described in § 651.26, is an overbroad, standardless delegation in violation of the Administrative Procedure Act and the Constitution.

Response: The Flexible Area Action System described in § 651.26 is not a new provision, rather it was implemented through the approval of Amendment 3 to the FMP. The proposed rule republished the entire part and not just the provisions changed or added by Amendment 5. This was done to aid the reader. The commenter is invited to review responses to comments published at the time this section was promulgated.

Monitoring Requirements

Comment 42: One association commented that the presumption in § 651.28(a)(4) is unreasonable because the vessel operator may not know the violation is occurring and thus may fail to collect the evidence to rebut the presumption. A vessel could run through its whole allocation without knowing it, if a battery shorts out.

Response: The VTS unit typically displays a signal when the unit is in communication with an overhead satellite. The vessel operator should be able to determine readily if the unit is functioning or at least enter into agreement with the VTS unit vendor that he/she be notified when the unit is not functioning properly. If the unit is not functioning properly, the vessel operator should respond accordingly and try to correct the problem, and if not able to, gather the evidence necessary.

Comment 43: One association commented that, in § 651.28(a)(7), the definition for tampering must except unknowing activity and such actions as rigging the vessel, raising fishery cones, sailing into fog banks, etc., all of which could affect signal or position accuracy.

Response: Adverse weather typically does not distort the information provided by a VTS unit. This only occurs if the antenna is disrupted or there is an occurrence of extreme weather. Tampering implies a knowing violation. Enforcement discretion will be used in determining violations and whether an action was willful or not.

Comment 44: Four VTS vendors commented that the requirement for polling is not essential for vessel monitoring objectives.

Response: NMFS believes that the polling requirement is an integral component of a monitoring system employing a VTS. Polling will enhance NMFS ability to insure adequacy of its DAS monitoring requirements. Moreover, the use of a VTS will not be limited to just DAS monitoring, but will also be used for closed area and Hague Line surveillance, and other enforcement concerns. Polling will allow NMFS to change the frequency of location reporting in support of specific enforcement operations. This could occur for a given area, individual vessels or groups of vessels. Polling can also be beneficial to search and rescue operations by pinpointing location, speed of drift, etc.

Comment 45: Four VTS vendors commented that the requirement that the VTS provide two-way network communication between the vessel and shore is not essential for vessel monitoring objectives. The commenters stated that vessels are already equipped with radios, telephone, telex, or facsimile equipment.

Response: NMFS believes that two-way communication is necessary. Under § 651.7(b)(1), vessel operators may choose to provide catch information through the VTS unit. Under § 651.29(a)(1), vessels will use the VTS to notify NMFS that they are leaving on a trip that will not involve a groundfish DAS. Allowing reporting such as noted above through the VTS, greatly enhances NMFS' ability to receive information on a timely basis, 24 hours a day. Radios and telephones require someone to be present to receive the call. Telex and facsimile equipment could provide the information, but at greater expense to NMFS through having to input the data to another system. NMFS believes that the two-way communication capabilities will allow VTS to be used for more applications, once established. Consequently, NMFS is not changing the specifications.

Days-at-Sea Notification

Comment 46: One association commented that, in § 651.29 (a) and (b), if the primary system fails or malfunctions and the Regional Director fails to authorize the use of a call-in system, then vessels are not allowed to fish. The Regional Director should be required, not just permitted, to fill the gap.

Response: NMFS recognizes that without a VTS requirement, as written in the proposed rule, vessels would be unable to fish. The final rule has been revised so that initially a call-in system will be required by vessels that will later be subject to VTS requirements when such a system is available. Also, the final rule has been revised so that the Regional Director must authorize a call-in system if a VTS is later shown to be ineffective for monitoring DAS.

Comment 47: One association commented that, in § 651.29(c) (2) and (4), requiring a confirmation by the Regional Director renders the call-in and fax-in useless on nights and weekends

(when most trips start or finish). If the Regional Director fails to confirm the end of the trip, the counting of DAS will run without the fisherman being able to stop it. An alternate to confirmation must be provided.

Response: Confirmation will be automatic through the call-in system or FAX. Neither system will require the vessel operator or owner to be limited to NMFS work hours. The systems have been designed to handle multiple calls and will have sufficient backup such that any inconvenience will be minimized.

Observer Requirements

Comment 48: One association commented that, in § 651.31(c), the requirements applying to an owner or operator regarding at-sea observer coverage represents an unlawful taking, unless compensated.

Response: See response to Comment 24.

Comment 49: One association expressed concern about the cost to the vessel of the observer requirements under § 651.31, citing the expense of liability insurance.

Response: As has been done for the past several years, NMFS will continue to place voluntary sea samplers on board vessels. Whether it is a voluntary sea sampler or a mandatory observer, NMFS will be responsible for the salary, but the vessel will be responsible for adequate accommodations and food. NMFS is not required to provide insurance to the vessel owner regarding liability to the observer. If such insurance is desired by the vessel owner, it will be the owner's responsibility to provide such insurance coverage for the time the observer is on the vessel.

Comment 50: One association commented that the allowance for an observer to inspect and copy communication logs may be an invasion of privacy or an unauthorized disclosure of proprietary information. The requirement to inspect and copy should be restricted to information pertaining to catch and related data.

Response: The final rule requires that only information relating to the catch and related data be provided to the observer.

Sink Gillnet Requirements

Comment 51: One association stated that the amendment does not provide consistent, targeted controls to reduce incidental harbor porpoise mortality and recommended that time and area closures be implemented.

Response: In anticipation of the harbor porpoise framework measure being approved, the Council has been evaluating the feasibility of time/area closures. The measure and implementing rule requiring all gillnets to be out of the water, is intended to serve as the default harbor porpoise mitigation of take measure until such time as another is implemented. It was designed to meet harbor porpoise protection objectives over 5 years. Under the framework measure, the Council will be able to recommend time/area closures for implementation once they are determined to be appropriate.

Comment 52: The Marine Mammal Commission commented that the monthly period of time when sink gillnets are required to be removed from the water should be 16 days per month in year 1, rather than 4 days per month. The 16 days per month should be put into effect pending an assessment of its effect on reducing the incidental take level and/or development of alternative management measures.

Response: Once a fishery management plan or amendment has been formally submitted by a Council, NMFS has authority to approve or disapprove provisions, but has little authority to modify a provision. To disapprove this measure would have eliminated all protection for harbor porpoise and groundfish afforded by this measure, at least in the short term. Indeed, the Biological Opinion prepared for the amendment recommends an accelerated schedule, by initially going to the year 2 schedule of 8 days a month in the first year. As stated previously, the Council's evaluation of time/area closures is being conducted with the goal of implementing such a measure under the framework as soon as possible. If the Council recommends such a measure and it is approved for implementation, the necessary protection may be provided.

Comment 53: The Marine Mammal Commission commented that the proposed critical habitat areas for right whales (Cape Cod Bay and Great South Channel) should be adopted as closed areas, instead of the area designated as Closed Area I.

Response: Much of the proposed critical habitat is already included in Closed Area I and the closure occurs at a time when right whales are present in the area. The Biological Opinion prepared for this amendment determined that Cape Cod Bay and the Great South Channel will not be adversely affected by the Amendment 5 measures. If the proposed critical habitat for right whales becomes final, it may be appropriate at that time to consider such a change under the framework provisions, in subpart C. The exception to this would be Cape Cod Bay, which is under the Commonwealth of Massachusetts' jurisdiction.

Comment 54: The Marine Mammal Commission recommended that the exemption for gillnets from the effort control measures be disapproved.

Response: The Council intends for the exemption to be in place only until such time as it can determine the impact of the harbor porpoise take reduction measures on fishing mortality. Rather than try to reconcile the two measures, the Council chose to concentrate its efforts on reduction of harbor porpoise mortality. It is likely that these measures will reduce fishing mortality. Reducing the time when gillnets are allowed in the water also reduces the time to catch groundfish and take harbor porpoise incidentally. A reduction in time will reduce fishing effort.

Framework Specifications

Comment 55: One individual stated that the framework measures are illegal in that they override and assume the functions of NMFS. The framework measures will not provide the quick reaction needed to conserve small fish.

Response: The framework measures are consistent with the Magnuson Act and other applicable law; NMFS authority is not diminished by this measure or the Council. Measures proposed by the Council must be analyzed and are subject to public comment. Once the Council recommends measures, NMFS will make a determination on the appropriateness of the measures with regard to the Magnuson Act and other applicable law.

The framework measure is not specifically designed to preserve concentrations of small fish. Other permanent measures, such as the increase in minimum mesh size, the Stellwagen Bank and Jeffreys Ledge juvenile protection areas, Nantucket Lightship Closed Area and the Flexible Area Action System are designed to provide protection to juvenile fish. If other areas are determined to need protection or the timing of protection needs to be changed, the framework measure can be used to accomplish this.

Comment 56: One association expressed concern that the amendment's measures may be insufficient to end overfishing and rebuild depleted fish stocks. The commenter expressed hope that the framework measure of subpart C would be followed and that it would allow for sufficient adjustments, if necessary.

Response: NMFS is concerned about the continued decline of the stocks and

that it may be necessary to take further action through the framework measure. NMFS, in approving the amendment, has sent the Council a letter describing this concern and stating NMFS' expectation that the framework provisions will be used to meet the goals and objectives of the Amendment.

Other Comments

Comment 57: One individual raised several questions about the process by which the proposed rule was promulgated, with regard to the submitted amendment and the role of the Council and NMFS.

Response: The Magnuson Act, section 302(h), specifies the functions of Regional Fishery Management Councils. One of these functions is to prepare and submit to the Secretary fishery management plans and amendments for those fisheries that require conservation and management within its geographical area of authority. Under section 303(c), the Magnuson Act specifies that "proposed regulations which the Council deems necessary and appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 304 and 305." The Secretary is then responsible for making any changes necessary for implementation and publishing the proposed regulations. Thus, the Council is responsible for proposing those measures necessary for the conservation and management of the resource. If what a Council proposes is consistent with the Magnuson Act and other applicable law, the Secretary is responsible for the approval and implementation of the proposed measures.

Comment 58: One individual disputed the statement in the Supplementary Information section of the preamble of the proposed rule, that "the FMP has been in effect since 1986, and has been amended four times * * *" The commenter was not aware of any evidence that the FMP had been approved or accepted by the Secretary prior to final rulemaking.

Response: On August 20, 1986, an interim rule (51 FR 29642) was issued, which indicated that the Secretary had partially disapproved the FMP and that the remaining approved measures were implemented for a period ending on September 30, 1987. On September 17, 1987, a final rule (52 FR 35093) was published that implemented Amendment 1, which responded to the deficiencies of the FMP. The approval of Amendment 1 was not conditional and its measures along with the approved FMP measures remained in effect until amended by Amendment 2 (54 FR 4798, January 31, 1989), Amendment 3 (54 FR 52803, December 22, 1989), Amendment 4 (56 FR 24724, May 31, 1991) and now, Amendment 5.

With regard to Amendment 5, the Council, with assistance from NMFS, U.S. Coast Guard, state fishery agencies, academia, and the Mid-Atlantic Fishery Management Council, prepared the amendment and other supporting documents. NMFS prepared the proposed rule, which was reviewed by the Council for consistency with the amendment.

Other comments were received related to approval of the amendment or other concerns, rather than on the proposed rule. These comments included: Comments on the adequacy of the analysis performed by the Council, recommendations for emergency action on haddock, additional measures for yellowtail flounder, recommendations on the proposed listing of harbor porpoise under the Endangered Species Act and action under Marine Mammal Protection Act, recommendations for increased observer coverage under the Marine Mammal Protection Act, reauthorization of the Magnuson Act, the relationship between the Magnuson Act and the Administrative Procedure Act. All comments received were considered in the decision to approve the amendment.

Changes From the Proposed Rule

In § 651.2, in the definition for a "combination vessel" the phrase "and the Atlantic Sea Scallop Fishery Management Plan" was removed to make it clear that qualification for scallop DAS is not required under this part.

In § 651.2, the definition for "DAS (Day(s)-at-sea)" was modified to clarify when a DAS occurs, and a definition for "out of the multispecies fishery or DAS program" was added to distinguish between when a vessel is subject to DAS and when it is not.

In § 651.2, the definition for "Dealer" was modified to include the phrase "issued a valid Federal vessel permit under this part" to clarify that dealers are required to have a permit if they purchase from vessels issued a Federal multispecies permit.

In § 651.2, the phrase "declared out of the multispecies fishery" was replaced with the phrase "out of the multispecies fishery or DAS program" to reflect more accurately the requirements of § 651.22.

In § 651.2, the definition for "scallop dredge vessel" was made consistent with the regulatory requirements by adding a phrase to clarify that a scallop dredge vessel must have been issued or applied for a limited access scallop permit.

In § 651.4, a phrase was added to the introductory text to explain the changes made to the applicability date of this requirement.

In § 651.4, the narrative within the introductory text was modified by adding the word "valid" before the types of permits listed, to provide further clarification.

In §§ 651.4, 651.5 and 651.6, several editorial changes were made to provide consistency between the administrative requirements contained in these sections and similar sections contained in 50 CFR part 650.

In § 651.4(a)(1)(i)(B), the phrase "on or prior to" was replaced with "as of" to reflect the language in Amendment 5 and to clarify the requirement.

In § 651.4, paragraph (a)(1)(i)(B) was modified by adding the word "written" to clarify how this requirement can be met.

In § 651.4, paragraph (a)(3) was modified by adding the word "written" to clarify how this requirement can be met.

In § 651.4(a)(4)(ii), the sentence "For undocumented vessels, net tonnage does not apply" was added to clarify further the requirements for replacement vessels.

In § 651.4(f)(2)(iii), the references to 1994 and 1995 were removed to clarify that this election must be on the permit application in all years.

Section 651.4(f)(2)(v) was rewritten to clarify options for movement between the non-DAS program permit categories.

Section 651.5(a) was modified so that a vessel operator need only carry the operator permit while on board the vessel rather than in possession at all times.

Section 651.5(c) was modified to add the sentence "Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading." This sentence was included under § 651.5(n) in the proposed rule and is repeated in this section in the final rule to increase awareness of this provision.

Section 651.9(b)(10) was modified to clarify what act was actually prohibited.

In § 651.9(c), the phrase "while the vessel, and persons on the vessel, are in possession of or landing more than 500 lbs (226.8 kg) of, or fishing for regulated species" was added to clarify this requirement.

Section 651.9(e)(2)(ii) was divided into paragraphs (e)(2)(ii) and (e)(2)(iii) to clarify the prohibitions.

In § 651.20, paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) have been corrected to cross reference § 651.20 (e) and (f), instead of § 651.20 (f) and (g).

In § 651.20, paragraphs (a)(3)(i), (a)(4)(i)(A), (c)(3)(i), (c)(3)(ii), (d)(3)(i), (d)(3)(ii), (e)(1)(iv), (f)(4), the phrase "the possession limit of regulated species specified under § 651.27(a)" is replaced with "500 lbs (226.8 kg) of regulated species." This is because § 651.27(a) is not implemented until May 1, 1994, and the bycatch requirement for the small mesh fisheries must be implemented on March 1, 1994.

In § 651.22, paragraph (b)(3)(iv), the requirement under § 651.22(c)(1)(i)(E) was added for consistency between an identical requirement between the Fleet DAS and Individual DAS programs.

Section 651.22(d)(1)(i)(C) was revised to clarify what is required to verify the length of a vessel.

Section 651.22(d)(1)(ii) was modified with the addition of the phrase "excepts gillnets and gear not intended to fish for multispecies finfish such as lobster", to provide consistency with the Council's intent for this requirement.

Section 651.22(d)(2) was replaced with paragraphs (2)(i) through (iii) to clarify that sink gillnet vessels greater than 45 ft (13.7 m) in length are exempt from the DAS effort reduction program when using sink gillnet gear exclusively, unless further effort reduction measures are implemented; that when these vessels use other gear and intend to fish for, possess or land, or do possess or land more than 500 lbs. (226.9 kg) of regulated species, they shall be subject to the DAS effort reduction program; and that sink gillnet vessels less than 45 ft (13.7 m) in length are exempt from the DAS effort reduction program unless further effort reduction measures are implemented. These changes clarify what sink gillnet vessels are subject to with regard to the effort reduction program and under which circumstances sink gillnet vessels are exempted from its requirements.

In § 651.22, paragraph (d)(2)(ii), a sentence was added to clarify the requirements for vessel fishing in both the sink gillnet fishery and a DAS program.

Section 651.22,(d)(3) was modified by adding the phrase "except for combination vessels" to clarify that combination vessels are not subject to this requirement.

In § 651.27, paragraph (a)(1), the phrase "vessels issued hook-gear-only permits that are fishing with gear other than hook gear, sink gillnet vessels greater than 45 ft (13.7 m) in length that are fishing with gear other than gillnet gear" was added to further clarify when vessels using this type of gear are subject to the possession limit.

In § 651.28, paragraph (a)(1), the heading and all subsequent references have been revised from "certification" to "approval" to better define the process by which will NMFS select VTS vendors.

In § 651.28(a)(4), the phrase "not participating in the multispecies fishery" was replaced by "declared out of the multispecies finfish fishery" to provide consistency with other sections of the regulations.

Section 651.28(c)(3) has been revised to read, "If the owner of a sink gillnet vessel greater than 45 ft (13.7 m) in length intends to fish for regulated multispecies with gear other than sink gillnet gear on a fishing trip" in order to clarify when a sink gillnet vessel owner is required to provide notice.

In § 651.29, the information requirements under paragraphs (c)(1) and (c)(2) were modified such that the caller's telephone number is required, instead of the caller's address, in order to facilitate administration of this requirement.

In § 651.31(c)(5), the phrase "the vessel's log, communications logs," was deleted because it was determined to be inappropriate..

In § 651.32(a)(1)(i), the phrase "Vessel owners using sink gillnet gear must remove all of their sink gillnet gear" was added to clarify that vessel owners must remove only their own sink gillnet gear.

In § 651.32(a)(2), the phrase "upon issuance of the permit" was deleted to allow the Regional Director more flexibility in form and timing of notification.

In § 651.32, paragraph (c) was corrected to be paragraph (b).

In §§ 651.4 introductory text, 651.4(a), 651.4(b), 651.4(c), 651.9(e)(2) introductory text, 651.22(a), 651.22(b)(1)(i), 651.22(c)(1), 651.22(d)(1)(i), 651.22(e), 651.29(a)(1), 651.29(b), introductory text, and 651.33 introductory text, wording was added to implement these requirements on May 1, 1994, and to clarify that vessels may fish using a valid 1993 multispecies vessel permit until that time.

In §§ 651.5(a), 651.9(a) introductory text, 651.9(e)(1)(i), 651.9(e)(6), 651.9(e)(8), 651.9(e)(9), 651.20 introductory text, 651.20(a)(2), 651.20(a)(3)(ii), and 651.20(c)(4), revisions were made to clarify that all permit holders under this part are subject to these requirements.

Classification

The Council prepared an FSEIS for Amendment 5, which was filed by the Environmental Protection Agency with the Office of the Federal Register. The Assistant Administrator for Fisheries, NOAA, (AA) determined, upon review of the FSEIS and public comments that the preferred alternative of the Amendment is environmentally preferable to the status quo. The FSEIS demonstrates that the preferred alternative contains management measures to eliminate the overfished condition of stocks of groundfish, especially haddock, cod, and yellowtail flounder; provides economic and social benefits to the fishery in the long term; and should provide better balance in the ecosystem in terms of the groundfish resources.

NMFS notified the Small Business Administration during the proposed rule stage that this action may have significant effects on a substantial number of small entities based upon an IRFA prepared by the Council. The IRFA now constitutes an FRFA based on public comments. The FRFA determines that most active vessels that participate in the fishery are considered small entities according to the criteria established by the Small Business Administration. Amendment 5 excludes the smaller vessels (i.e., boats 45 ft (13.7 m) and smaller in length) from effort reduction measures. The regulations would probably not have a significant impact on these vessels, which constitute about 64 percent of the qualified vessels and which landed approximately 15 percent of the groundfish in 1991. However, the proposed reduction in effort may have considerable impacts on those vessels that are still considered small entities which are longer than 45 ft (13.7 m). These small entities constitute 36 percent of the qualified vessels, and landed approximately 85 percent of the groundfish in 1991, and are expected to incur significant short-term losses in revenue that will be offset by long-term gains and greater stability in the fishery.

The rule contains eight new collection-of-information requirements and revises seven existing requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been approved by the Office of Management and Budget (OMB). Nevertheless, public comments are invited on the burden-hour estimates for the collection-of-information requirements listed below.

The new reporting requirements are:

1. Dealer permits, (§ 651.6—OMB Approval #0648–0202) (5 minutes/response);

2. Operator permits, (§ 651.5—OMB Approval #0648–0202) (1 hour/response);

3. Notice requirements for observer deployment, (§ 651.31—OMB Approval #0648–0202) (2 minutes/response);

4. Proof of installation of vessel tracking system, (§ 651.4(f)(vi)—OMB Approval #0648–0202) (2 minutes/response);

5. Automated vessel tracking system, (§ 651.29(a)—OMB Approval #0648–0202) (0 minutes/response);

6. Vessel call-in or electronic card reporting requirement, (§ 651.29(b)—OMB Approval #0648–0202) (2 minutes/response);

7. Notice of entry/exit of Closed Area II due to hazardous weather, (§ 651.21(b)(iii)(D)—OMB Approval #0648–0202) (2 minutes/response);

8. Vessel logbooks, (§ 651.7(b)—OMB Approval #0648–0212) (5 minutes/response).

Revisions to the existing requirements are:

1. Three new vessel permit categories (limited access, hook-gear-only permits, possession-limit-only permits) (§ 651.4(a), (b), and (c)—OMB Approval #0648–0202) (no increase in burden above that currently associated with vessel permits);

2. Limited access permit denial appeals, (§ 651.4(a)(8)—OMB Approval #0648–0202) (0.5 hours/response);

3. Limited access permits, days at sea appeals (§ 651.22(a)(6)—OMB Approval #0648–0202) (2 hours/response);

4. The Cultivator Shoals Exemption Program (§ 651.20(a)(4)(i)—OMB Approval #0648–0202) (2 minutes/response);

5. The Midwater Trawl Exemption Program (§ 651.20(e)—OMB Approval #0648–0202) (2 minutes/response);

6. Dealer purchase reports (§ 651.7(a)—OMB Approval #0648–0229) (2 minutes/response);

7. Annual processed products reports (§ 651.7(a)(2)—OMB Approval #0648–0018, will be mandatory (2 minutes/response).

Send comments regarding these burden estimates or any other aspect of these collections-of-information, including suggestions for reducing the burdens, to Richard Roe, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

This rule is not subject to review under E.O. 12866.

The AA has determined that there is good cause to waive the 30-day delay in effective date normally required by section 553(d) of the Administrative Procedure Act because many of the provisions of this rule must be effective by March 1, 1994 to begin eliminating the overfished condition of some groundfish stocks. Some provisions of the rule do not become applicable by their own terms until dates after March 1, 1994, such as permit requirements described in § 651.4, and requirements for vessels having limited access permits which will be fishing in the individual DAS program and combination vessels to use a VTS as described in § 651.29. A letter sent by the Regional Director to all permit holders advises that the call-in notification procedure described in § 651.29 shall apply to all vessels holding limited access permits until a VTS system is operational, sometime after 6 months after March 1, at which time vessels fishing under the individual DAS program and combination vessel.

List of Subjects in 50 CFR Part 651

Fisheries, Reporting and recordkeeping requirements.

Dated: February 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is revised; with § 651.9(a)(11) and (12), § 651.9(e)(33) and (34), and § 651.27(b) expiring at 2400 hours, April 2, 1994; to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.

651.1 Purpose and scope.
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651.3 Relation to other laws.
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Subpart B—Management Measures

651.20 Regulated mesh areas and restrictions on gear and methods of fishing.
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651.27 Possession limits.
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651.30 Transfer-at-sea.
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651.32 Sink gillnet requirements to reduce harbor porpoise takes.
651.33 Hook-gear-only vessel requirements.

Subpart C—Framework Adjustments to Management Measures

651.40 Framework specifications.
Figure 1 to Part 651—Regulated mesh areas.
Figure 2 to Part 651—Nordmore grate.
Figure 3 to Part 651—Closed areas.

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

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

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

Bottom-tending gillnet or sink gillnet means any gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Butterfish means *Peprilus triacanthus.*

Chair means the Chair of the Multispecies (Groundfish) Oversight Committee of the Council.

Charter and party boats means vessels carrying recreational fishing persons or parties for a per capita fee or for a charter fee.

Codend means the terminal section of a trawl net in which captured fish may accumulate.

COLREGS Demarcation Lines means the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972 (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules.

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

Committee means the Multispecies (Groundfish) Oversight Committee of the Council.

Council means the New England Fishery Management Council.

DAS (Day(s)-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port for purposes of multispecies finfish fishing in which the vessel intends to possess or possesses more than the possession limit of regulated multispecies.

Dealer means any person who receives multispecies finfish for a commercial purpose from the owner or operator of a vessel issued a valid Federal vessel permit under this part, other than exclusively for transport on land.

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

Fishery Management Plan (FMP) means the Fishery Management Plan for Northeast Multispecies Fishery, as amended.

Gillnet means fishing gear comprised of a net hung from a float-line, with a lead-line on the bottom, such that it is designed to be or is configured vertically in the water column to entangle passing fish.

Gross registered tonnage means the gross tonnage specified on the U.S. Coast Guard documentation.

Harbor porpoise means *Phocoena phocoena*.

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

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

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

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

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

Mackerel means Atlantic mackerel, *Scomber scombrus*.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

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

Multispecies finfish or finfish means the following finfish:

Gadus morhua—Atlantic cod.
Glyptocephalus cynoglossus—witch flounder.
Hippoglossoides platessoides—American plaice.
Limanda ferruginea—yellowtail flounder.
Macrozoarces americanus—ocean pout.
Melanogrammus aeglefinus—haddock.
Merluccius bilinearis—silver hake.
Pollachius virens—pollock.
Pseudopleuronectes americanus—winter flounder.
Scophthalmus aquosus—windowpane flounder.
Sebastes marinus—redfish.
Urophycis chuss—red hake.
Urophycis tenuis—white hake.

NEFSC means the Northeast Fisheries Science Center of NMFS, NOAA.

Northern shrimp means *Pandalus borealis*.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

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

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port for purposes of fishing in which the vessel possesses no more than the possession limit of regulated species.

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

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

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

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

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

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

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

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

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for multispecies finfish.

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

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use dredge gear, and that has been issued or has applied for a Federal limited access scallop permit.

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

Standard box means a box, typically constructed of wax-saturated cardboard or wood, designed to hold 125 pounds (56.6 kg) of fish plus ice, and that has a volume of not more than 5,100 cubic inches (2.95 cu. ft or 83.57 cm^3).

Standard tote means a box typically constructed of plastic, designed to hold 100 pounds (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 liters, or a volume of not more than 4320 cubic inches (2.5 cubic feet or 70.79 cubic cm^3).

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

Trip is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction or reconstruction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 651.28(a) and approved by NMFS for use by multispecies finfish vessels as required by this part.

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

Whiting means *Merluccius bilinearis*.

§ 651.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), through (e) of this section.

(b) Additional regulations governing domestic fishing for squid, mackerel, and butterfish, which are affected by this part, are found at 50 CFR part 655.

(c) Additional regulations governing domestic fishing for summer flounder, which are affected by this part, are found at 50 CFR part 625.

(d) Additional regulations governing domestic fishing for Atlantic sea scallops, which are affected by this part, are found at 50 CFR part 650.

(e) Nothing in these regulations supersedes more restrictive state management measures for multispecies finfish.

§ 651.4 Vessel permits.

Beginning on May 1, 1994, any vessel of the United States that fishes for, possesses, or lands multispecies finfish, except vessels that fish for multispecies finfish exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board an authorizing letter issued under paragraph (a)(8)(v) of this section, a valid limited access multispecies permit, a valid hook-gear-only permit, or a valid possession-limit-only permit issued under this section. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(a) *Limited access multispecies permits.* Beginning on May 1, 1994, any vessel of the United States that possesses or lands more than the possession limit of regulated species specified under § 651.27(a), except vessels fishing with fewer than 4,500 hooks that have been issued a hook-gear-only permit as specified in paragraph (b) of this section, vessels fishing for regulated species exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board a valid Federal limited access multispecies permit, or an authorizing letter issued under paragraph (a)(8)(v) of this section. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application. To qualify for a limited access multispecies permit, a vessel must meet the following criteria, as applicable:

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access multispecies permit for 1994, a vessel must meet one of the following criteria:

(A) The vessel had been issued a Federal multispecies permit as of February 21, 1991, or renewed a Federal multispecies permit in 1991 that was issued before February 21, 1991, and the vessel landed multispecies finfish on at least one trip completed between January 1, 1990, and February 21, 1991, inclusive; or

(B) The vessel was under written agreement for construction or re-rigging, or was under written contract for purchase as of February 21, 1991, and the vessel was issued a Federal multispecies permit and landed multispecies finfish on at least one trip between February 21, 1991, and February 21, 1992; or

(C) The vessel is replacing a vessel that meets any of the criteria set forth in paragraphs (a)(1)(i) (A) or (B) of this section, and the vessel meets the criteria described in paragraph (a)(4) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and permit history, unless authorized by the Regional Director. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) A limited access multispecies permit for 1994 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1994.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access multispecies permit after 1994, a vessel must have been issued a limited access multispecies permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access multispecies permit for the preceding year, and, if applicable, the vessel must meet the criteria set forth in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access multispecies permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (a)(3) of this section.

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

(4) *Replacement vessels.* To be eligible for a limited access permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel it is replacing as of the date the vessel it is replacing was initially issued a 1994 limited access multispecies permit, as specified on a valid application for a permit under this section; except that, the horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel being replaced has been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access multispecies permit; and

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial 1994 application for a limited access multispecies permit; except that the length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit if any or all of these specifications have been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access multispecies permit. For purposes of paragraph (a)(2), a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 gross registered tons. For undocumented vessels, net tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access

multispecies permit, or to apply for or renew a limited access multispecies permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a 1994 limited access multispecies permit as specified in that vessel's permit application for a 1994 limited access multispecies permit; and

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a 1994 limited access multispecies permit as specified in that vessel's application for a 1994 limited access multispecies permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) A replacement of a vessel that does not result in increasing horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section, that they qualify for a limited access multispecies permit if they meet the requirements contained in paragraphs (d) through (h) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access multispecies permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access multispecies permit by meeting the requirements described under paragraphs (e) and (f) of this section and by submitting the information described in paragraphs (a)(1) through (5) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (a)(8) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access multispecies permit will be issued to the vessel.

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

(8) *Appeal of denial of limited access multispecies permit.*

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

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

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) *Status of vessels pending appeal of a limited access multispecies permit denial.* A vessel for which an application has been completed and an appeal has been initiated may fish under the Fleet DAS program if it has appealed the denial, the appeal is pending, and the vessel has on board a letter from the Regional Director, authorizing the vessel to fish under the Fleet DAS. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(9) *Adjustments to limited access multispecies permits.* In 1996 and thereafter, the Council may adjust the criteria for issuance of a limited access multispecies permit. In making the adjustment, the Council shall take into consideration the fishing mortality goals and the objectives of the FMP. Any such adjustment may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(b) *Hook-gear-only permit.* Beginning on May 1, 1994, any vessel of the United States that does not have on board a valid limited access multispecies permit or a possession-limit-only permit, except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, may possess and land multispecies finfish if it never sets, per day, or possesses, more than 4,500 rigged hooks as specified in § 651.33, and has on board a valid hook-gear-only permit. A hook-gear-only permit may be issued to a vessel regardless of whether it qualifies for a limited access multispecies permit. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(c) *Possession-limit-only permit.* Any vessel of the United States that does not have on board a valid limited access multispecies permit or hook-gear-only permit, and that possesses or lands no more than the possession limit of multispecies finfish specified under § 651.27(a), except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, must have aboard a valid possession-limit-only permit. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(d) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are

subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access multispecies permits under this section will not be accepted after December 31, 1994. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for either a limited access multispecies, hook-gear-only, or possession-limit-only permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than a 25-percent interest; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access multispecies permit must also contain the following information:

(i) The engine horsepower of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1994, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1-year of the date of when the contract for the replacement engine was signed.

(ii) The length, gross tonnage, and net tonnage of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within 1 year of the date of when the contract for the upgrade was signed.

(iii) If the vessel owner is applying to fish under the individual DAS program specified in this section, the application must include such election.

(iv) In 1995, if the vessel owner is applying to fish under a different DAS program than was assigned for 1994, the application must include such election and the vessel must fish only in that category for the entire year.

(v) For 1996 and thereafter, a vessel, when fishing under the DAS program, may fish only under the DAS program assigned to it in 1995, or if not assigned in 1995, the DAS program assigned to it on its initial permit to fish under the DAS program. However, any vessel may elect for any year to fish under a hook-gear-only permit if it meets the requirements specified in paragraph (b) of this section.

(vi) Beginning on September 1, 1994, if the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit, although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

(g) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (h) of this section.

(h) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under paragraph (a)(9) of this section, the Regional Director shall issue a Federal multispecies vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 651.7; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (a)(1)(iii) and (p) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(1) and (2) of this section; or

(iv) The applicant applying for a permit for a combination vessel, electing to participate in the Individual DAS program, or electing to use a VTS, has failed to meet all of the VTS requirements as described in § 651.28; or

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

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

(i) *Expiration.* Federal fishing permits must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it

otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (m) of this section.

(k) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

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

(m) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

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

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

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

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

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

§ 651.5 Operator permits.

(a) *General.* Any operator of a vessel holding a valid Federal multispecies permit under this part, or any operator of a vessel fishing for multispecies finfish in the EEZ or in possession of multispecies finfish in or harvested from the EEZ, must carry on board a valid operator's permit issued under this part.

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

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 651.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

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

(g) *Expiration.* Federal operator permits must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

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

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

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

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

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

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

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

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

§ 651.6 Dealer permits.

(a) All dealers must have been issued and have in their possession a valid permit issued under this part.

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

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 651.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Federal dealer permits must be renewed annually, and unless renewed, will expire upon the renewal date specified in the permit.

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

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

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

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

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

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

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

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 651.7 Recordkeeping and reporting.

(a) *Dealers.*—(1) *Weekly report.* Dealers must send by mail, to the Regional Director, or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided in the report: name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon request by an authorized officer or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make permanently available for inspection, copies of the required reports that have been submitted, should have been submitted, or the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be sent and, if mailed, postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(b) *Vessel owners.*—(1) *Fishing log reports.* The owner of any vessel issued a Federal multispecies permit under § 651.4 must maintain, on board the

vessel, and submit an accurate daily fishing log for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, using the VTS, or through other media. The following information and any other information required by the Regional Director must be provided: Vessel name, U.S. Coast Guard documentation number (or state registration number if undocumented), and permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow-time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip, all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 651.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and that is over 25 ft (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S.C.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

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

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel holding a valid Federal multispecies vessel permit issued under this part, issued a permit under § 651.5 or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land multispecies finfish smaller than the minimum size as specified in § 651.23.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(3) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Sell, transfer, or attempt to sell or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal Dealer's Permit issued under § 651.6.

(7) Land, offload, remove, or otherwise transfer or attempt to land, offload, remove, or otherwise transfer multispecies finfish or fish from one vessel to another vessel or other floating conveyance.

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

(9) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(10) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 651.31.

(11) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(12) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock, as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

(13) Fish with, set, haul back, possess on board a vessel, or fail to remove from all waters, a sink gillnet during the times specified in § 651.32(b).

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 651.4(a) or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land more than 500 lbs. (226.8 kg) of regulated species per trip after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

(2) If required to have a VTS unit as specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 651.29(a).

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

(4) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(a)(5)(i).

(5) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(a)(5)(ii).

(6) Fail to comply with any requirement regarding the DAS notification as specified in § 651.29.

(7) If not fishing under the VTS system, fail to have on board the vessel

a card issued by the Regional Director, as specified in § 651.29(b).

(8) Fail to notify that a vessel is participating in the DAS program as specified in § 651.29(b).

(9) Fail to comply with the other methods of notification requirements, including a call-in system as specified in § 651.29(c), if required by the Regional Director.

(10) Fail to provide notification of the beginning or ending of a DAS before leaving port or before returning to port, as required under § 651.29 (b) or (c).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a hook-gear-only permit under § 651.4(b) to fish with, set, or haul back more than 4,500 rigged hooks per day, or to possess on board a vessel more than 4,500 rigged hooks while the vessel, and persons on the vessel, are in possession of or landing more than 500 lbs. (226.8 kg) of, or fishing for regulated species.

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess or land per trip more than 500 lbs (226.8 kg) of regulated species.

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), and the operator on board such vessel has been issued an operator's permit under § 651.5 and has a valid permit on board the vessel;

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

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Possess or land regulated species in excess of 500 lbs (226.8 kg) per trip on or after May 1, 1994, as specified in § 651.27 unless:

(i) The multispecies finfish were harvested by a vessel that has been issued a limited access permit under § 651.4(a), a hook-gear-only permit under § 651.4(b), or a letter under § 651.4(a)(8)(v); or

(ii) The regulated species were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(4) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(5) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director.

(6) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any multispecies finfish from a trip unless the vessel is holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), or the multispecies finfish were harvested by a vessel without a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters.

(7) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(8) Purchase, possess, or receive for commercial purposes multispecies finfish caught by a vessel other than one holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or holding a Federal multispecies permit under this part without having been issued and possessing a valid operator's permit issued under § 651.5.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(11) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(12) Make any false statement in connection with an application under §§ 651.4 or 651.5 or on any report required to be submitted or maintained under § 651.7.

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

(14) Fish with or possess within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is exempted under § 651.20(a)(3) or (a)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(15) Fish with or possess within the area described in § 651.20(b)(1) nets of mesh smaller than the minimum size specified in § 651.20(b)(2), unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(16) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with or possess within the areas described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Enter the area described in § 651.21(a) on a fishing vessel during a

period in which the area is closed, except as specified in that section.

(19) Fish with, set, haul back, have on board a fishing vessel, or fail to remove sink gillnet gear in or from the area specified in § 651.21(a) during the time period specified in § 651.21(a)(1).

(20) Enter the area described in § 651.21(b) on a fishing vessel during the time period specified in § 651.21(b)(3), except as specified by § 651.21(b)(4).

(21) Fish in the area described in § 651.21(c), if the area has been closed as provided for in § 651.21(c), except as provided by § 651.21(c)(5).

(22) Fail to comply with the gear-marking requirements of § 651.25.

(23) Import, export, transfer, land, or possess regulated species that are smaller than the minimum sizes as specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(24) Interfere with, obstruct, delay, or prevent by any means lawful investigation or search relating to the enforcement this part.

(25) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(26) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(27) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3)(ii).

(29) Fail to comply with the requirements as specified in § 651.20(a)(5).

(30) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size by area fished specified in § 651.20, or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20 (e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(31) Fish with, set, haul back, possess on board a vessel, or fail to remove from the EEZ, a sink gillnet during the times specified in § 651.32(b).

(32) Violate any provision specified under § 651.29.

(33) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(34) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

(35) To purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species from a vessel issued a federal multispecies permit in excess of the possession limit applicable to a vessel as specified in § 651.27.

(f) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(g) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 for sale will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 651.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 651.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

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

All vessels fishing for, harvesting, possessing, or landing multispecies finfish in or from the EEZ and all vessels holding a Federal multispecies permit under this part must comply with the following restrictions on minimum mesh size, gear, and methods of fishing, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) regulated mesh area.* (1) *Area definition.* The Gulf of Maine/Georges Bank regulated mesh area is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	Latitude	Longitude
G1	(1)	(1)
G2	43°58′ N.	67°22′ W.
G3	42°53.1′ N.	67°44.4′ W.
G4	42°31′ N.	67°28.1′ W.
G5	41°18.6′ N.	66°24.8′ W.

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary [southward along the irregular U.S.-Canada maritime boundary].

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

Point	Latitude	Longitude	Approximate Loran C bearings
G6	40°55.5′ N.	66°38′ W.	5930–Y–30750 and 9960–Y–43500
G7	40°45.5′ N.	68°00′ W.	9960–Y–43500 and 68°00 W.
G8	40°37′ N.	68°00′ W.	9960–Y–43450 and 68°00 W.
G9	40°30.5′ N.	69°00′ W.	
G10	40°50′ N.	69°00′ W.	
G11	40°50′ N.	70°00′ W.	
G12		70°00′ W.[1]	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Mesh-size restrictions.* Except as provided in paragraphs (a)(3) through (5), (e), and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the

entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m) 3 (9 sq. ft (0.81 m²)), or to vessels not holding a Federal multispecies permit under this part and that are fishing exclusively in state waters.

(3) *Small-mesh exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the GOM/GB small mesh exemption area, if the vessel complies with the requirements specified in paragraphs (a)(3)(i) and (ii) of this section, if applicable. The GOM/GB small mesh exemption area is defined as the area between the territorial sea and the straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

GOM/GB SMALL-MESH EXEMPTION AREA

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

GOM/GB SMALL-MESH EXEMPTION AREA—Continued

Point	Latitude	Longitude
G1	(1)	(1)

1 Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Possession limit exemption.* A vessel may not possess on board or land per trip more than 500 lbs. (226.8 kg) of regulated species.

(ii) *Northern shrimp exemption.* A vessel holding a Federal multispecies permit under this part that is fishing for, harvesting, possessing, or landing northern shrimp, and a vessel fishing for, harvesting, or possessing northern shrimp in the EEZ, must have a properly configured and installed finfish excluder device in any net used to fish for or harvest northern shrimp, during the northern shrimp season as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC. The finfish excluder device must be configured and installed consistent with the following specifications (see Figure 2 to part 651) for an example of a properly configured and installed finfish excluder device):

(A) A finfish excluder device is a rigid or semi-rigid grate consisting of parallel bars of not more than 1 inch (2.54 cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grate at the point of attachment. The fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(4) *Cultivator Shoal whiting (silver hake) fishery exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Cultivator Shoal whiting fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal whiting fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 1 to part 651):

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
C1	42°10′ N.	68°10′ W.	13132	43970
C2	41°25′ N.	68°45′ W.	13527	43767
C3	41°05′ N.	68°20′ W.	13495	43627
C4	41°55′ N.	67°40′ W.	13074	43861
C1	42°10′ N.	68°10′ W.	13132	43970

(i) *Requirements.* Vessels fishing in this fishery must have on board an authorizing letter issued by the Regional Director. Vessel owners are subject to the following conditions:

(A) A bycatch limit (as defined in § 651.2) not to exceed 500 lbs (226.8 kg) of regulated species;

(B) A minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net;

(C) A season of June 15 through October 31, unless otherwise specified by publication of a notification in the **Federal Register**.

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The Council shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make the appropriate recommendations to the Regional Director following the procedures specified in subpart C of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* During the period March 1 through July 31 of each year, the minimum mesh size for nets in the following area shall be 6 inches (15.24 cm) in all sink gillnets and 6 inches (15.24 cm) square mesh in the last 140 bars of the codend and extension piece of all mobile net gear.

(i) The Stellwagen Bank/Jeffreys Ledge juvenile protection area is defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
SB1	42°34.0′ N.	70°23.5′ W.	13737	44295
SB2	42°28.8′ N.	70°39.0′ W.	13861	44295
SB3	42°18.6′ N.	70°22.5′ W.	13810	44209
SB4	42°05.5′ N.	70°23.3′ W.	13880	44135
SB5	42°11.0′ N.	70°04.0′ W.	13737	44135
SB1	42°34.0′ N.	70°23.5′ W.	13737	44295

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
JL1	43°12.7′ N.	70°00.0′ W.	13369	44445
JL2	43°09.5′ N.	70°08.0′ W.	13437	44445
JL3	42°57.0′ N.	70°08.0′ W.	13512	44384
JL4	42°52.0′ N.	70°21.0′ W.	13631	44384
JL5	42°41.5′ N.	70°32.5′ W.	13752	44352
JL6	42°34.0′ N.	70°26.2′ W.	13752	44300
JL7	42°55.2′ N.	70°00.0′ W.	13474	44362
JL1	43°12.7′ N.	70°00.0′ W.	13369	44445

(ii) Fishing for northern shrimp in the SB/JL juvenile protection area is allowed subject to the requirements of paragraph (a)(3)(ii) of this section, except that no bycatch of regulated species is allowed on board vessels participating in the northern shrimp fishery in the area and during the time period specified in paragraph (a)(5) of this section.

(b) *Nantucket Lightship regulated mesh area.*—(1) *Area definition.* The Nantucket Lightship regulated mesh area is that area bounded by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

NANTUCKET LIGHTSHIP REGULATED MESH AREA

Point	Latitude	Longitude
NL1	40°50′ N.	69°40′ W.
NL2	40°18.7′ N.	69°40′ W.
NL3	40°22.7′ N.	69°00′ W.
G10	40°50′ N.	69°00′ W.
NL1	40°50′ N.	69°40′ W.

(2) *Mesh-size restrictions.* (i) For 1994, except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 sq. ft (0.81 m²)).

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 square feet (0.81 m²)).

(c) *Southern New England regulated mesh area*—(1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 Part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6′ N.	66°24.8′ W.
G6	40°55.5′ N.	66°38′ W.
G7	40°45.5′ N.	68°00′ W.
G8	40°37′ N.	68°00′ W.
G9	40°30.5′ N.	69°00′ W.
NL3	40°22.7′ N.	69°00′ W.
NL2	40°18.7′ N.	69°40′ W.
NL1	40°50′ N.	69°40′ W.
G11	40°50′ N.	70°00′ W.
G12		70°00′ W.[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by a line running from the shoreline along 72°30′ W. longitude to the outer boundary of the EEZ.

(2) *Mesh size restrictions.* (i) For 1994, except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess or land per trip more than 500 pounds (226.8 kg) of regulated species.

(ii) *Net stowage exemption.* Vessels possessing more than 500 lbs (226.8 kg) of regulated species may have nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(4) *Net stowage requirements.* Except as provided in paragraphs (c)(3)(i) and (d)(3)(i) of this section, a vessel holding a valid Federal multispecies permit under this part and fishing in the Southern New England or Mid-Atlantic regulated mesh areas may not have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (c)(2) and (d)(2) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net 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; or

(ii) A net stowed and lashed down on deck, provided:

(A) It 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; or

(iii) A net that is on a reel and is covered and secured, provided:

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound;

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

(C) The codend is removed from the net and stored below deck, or

(iv) Nets that are secured in a manner authorized in writing by the Regional Director.

(d) *Mid-Atlantic regulated mesh area.*—(1) *Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the shoreline along 72°30′ west longitude to the intersection of the outer boundary of the EEZ (see Figure 1).

(2) *Mesh-size restrictions.* Except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at 50 CFR 625.24(a). This restriction does not apply to vessels that have not been issued a multispecies finfish permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than 500 lbs (226.8 kg) of regulated species.

(ii) *Net stowage exemption.* Vessels possessing more than 500 lbs (226.8 kg) of regulated species may have nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(e) *Midwater trawl gear exception.* (1) For regulated mesh areas south of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squid may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is issued an authorizing letter by the Regional Director;

(iii) The authorizing letter is on board the vessel; and

(iv) The bycatch does not exceed 500 pounds (226.8 kg) of regulated species.

(2) For regulated mesh areas north of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring and for mackerel may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that the requirements of paragraphs (f)(1)(i) through (iv) of this section are met.

(f) *Purse seine gear exception.* Fishing for Atlantic herring or blueback herring, mackerel, and menhaden may take place throughout the fishing year with purse seine gear of mesh size less than the regulated size, provided that:

(1) Purse seine gear is used exclusively;

(2) The vessel deploying the purse seine gear is issued an authorizing letter by the Regional Director;

(3) The authorizing letter is on board the vessel; and

(4) The bycatch of regulated species does not exceed 500 lbs (226.8 kg) of regulated species.

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

(h) *Restrictions on gear and methods of fishing.*—(1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (h)(1), head ropes shall not be considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (h)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) No vessel may use a net capable of catching multispecies finfish in which the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for multispecies finfish while pair trawling, or possess or land multispecies finfish that have been harvested by means of pair trawling.

§ 651.21 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may use, set, haul back, fish with, or have on board a vessel a sink gillnet in the area known as Closed Area I, defined by paragraph (a)(2) of this section, during the months of February through May.

(i) The use of other gear types may be prohibited in Closed Area I if it is determined that spawning fish are located in the area.

(ii) A determination that spawning fish are present in the area will be based upon available information, such as sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources, research surveys, fishermen's reports, and any other source of information.

(iii) The determination will be made by the Regional Director, with concurrence from the Council, and implemented, following the procedures specified in subpart C of this part.

(2) Closed Area I is bounded by six straight lines connecting the following points in the order stated (see Figure 3 to Part 651):

Point	Latitude	Longitude
CI1	40°53′ N.	68°53′ W.
CI2	41°35′ N.	68°30′ W.
CI3	41°50′ N.	68°45′ W.
CI4	41°50′ N.	69°00′ W.
CI5	41°30′ N.	69°00′ W.
CI6	41°30′ N.	69°23′ W.; and
CI1	40°53′ N.	68°53′ W.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may fish or be in the area known as Closed Area II, as defined in paragraph (b)(2) of this section, during the time period specified in paragraph (b)(3) of this section, except as specified in paragraph (b)(4) of this section (see Figure 3 to Part 651).

(2) Closed Area II is bounded by four straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CII1	41°00′ N.	67°20′ W.
CII2	41°00′ N.	66°35.8′ W.
G5	41°18.6′ N.	66°24.8′ W. (the U.S.-Canada Maritime Boundary)
CII3	42°22′ N.	67°20′ W. (the U.S.-Canada Maritime Boundary); and
CII1	41°00′ N.	67°20′ W.

(3) *Duration.* (i) For 1994 and 1995, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of February through May.

(ii) For 1996 and after, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of January through June.

(4) *Exceptions.* Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters;

(ii) Fishing with or using dredges designed and used to take scallops; or

(iii) Seeking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the closed area providing that:

(A) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(B) Such vessels do not fish in the area;

(C) Fishing gear is stowed in accordance with paragraph (c)(4) of this section; and

(D) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high frequency radio (2.182 kHz) of its intention of transitting the closed area and the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(5) The Regional Director may open Closed Area II to fishing prior to the scheduled openings in paragraph (b)(3) of this section by notification in the **Federal Register**, if the Regional Director determines that concentrations of spawning fish are no longer in the area.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may fish in the area known as the Nantucket Lightship Closed Area, defined in paragraph (c)(2) of this section, during the time period specified in the notification provided under paragraph (c)(3) of this section, except as specified in paragraph (c)(5) of this section, if the Regional Director determines that the NEFSC spring standardized bottom trawl survey index of age-2 yellowtail flounder is 12.0 or higher, based upon the number of yellowtail flounder per standardized tow.

(2) The Nantucket Lightship Closed Area is bounded by four straight lines connecting the following points in the order stated (see Figure 3 to Part 651):

Point	Latitude	Longitude
G10	40°50′ N.	69°00′ W.
CN1	40°20′ N.	69°00′ W.
CN2	40°20′ N.	70°20′ W.
CN3	40°50′ N.	70°20′ W.; and
G10	40°50′ N.	69°00′ W.

(3) *Notification.* The Regional Director shall provide notification of the closure through publication in the **Federal Register.**

(4) *Duration.* The area shall remain closed until the end of June of the following year.

(5) *Exceptions.* The closure shall not apply to persons on board vessels or fishing vessels fishing with or using:

(i) Pot gear designed and used to take lobsters;

(ii) Dredge gear designed and used to take ocean quahogs or surf clams; or

(iii) Hook-and-line gear, except that possession of yellowtail flounder by persons or vessels fishing with hook-and-line gear within this area is prohibited.

§ 651.22 Effort-control program for limited access vessels.

(a) Beginning on May 1, 1994, the owner of a vessel issued a limited access permit under the criteria specified in § 651.4(a), unless exempted under § 651.22(d), shall be subject to either the Individual DAS program as specified in paragraph (b) of this section or the Fleet DAS program as specified in paragraph (c) of this section. All such vessels shall automatically be assigned to the Fleet DAS program unless the vessel owner elects to apply for the Individual DAS program and is issued a limited access permit under § 651.4(a), or the vessel has been determined to be a combination vessel and the vessel owner has elected to apply for a limited access permit under § 651.4(a). Limited access permits will indicate the program under which the vessel owner will fish.

(b) *Individual Days-at-Sea*—(1) *Eligibility.* (i) Beginning on May 1, 1994, any vessel that is greater than 45 ft (13.7 m) in length and eligible for a limited access permit, except a combination vessel, may elect to fish under the Individual DAS program by making such election at the time of application for or renewal of a limited access permit. For 1996 and thereafter, the vessel must remain in the DAS program assigned to it in 1995.

(ii) The vessel owner of a vessel that has been determined to be a combination vessel and who has applied for a limited access permit under § 651.4(a) must fish under the Individual DAS program.

(2) *Criteria for determining a vessel's Individual DAS.* The initial DAS assigned to a vessel for purposes of determining that vessel's annual allocation as specified in paragraph (b)(3) of this section shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990 based on data, information, or other credible evidence available to the Regional Director at the time of election to participate under the Individual DAS program. Multispecies DAS are deemed to be the total number of days the vessel was absent for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(3) *DAS allocations.* (i) Each vessel participating in the Individual DAS program shall be allocated, annually, the maximum number of days at sea it may fish in the multispecies finfish fishery according to the criteria and table specified in paragraph (b)(3)(ii) of this section. A vessel that has declared

out of the multispecies finfish fishery pursuant to the provisions of § 651.29, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess or land more than the possession limit of regulated species specified under § 651.27(a) and complies with the other requirements of this part.

(ii) *Annual DAS allocations.* Vessels fishing under the Individual-DAS program will receive and be subject to annual allocations of DAS as specified in the following table. These allocations are determined by reducing the vessel's Individual DAS as calculated under paragraph (b)(2) of this section by 10 percent each year, including the first year, for the first 5 years of the effort reduction program.

INDIVIDUAL-DAS ALLOCATION=X DAYS

Year	Annual allocation
1994	x−10% days.
1995	x−20% days.
1996	x−30% days.
1997	x−40% days.
1998	x−50% days.

(iii) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(iv) All vessels fishing under the Individual DAS program must declare out of the multispecies finfish fishery for at least one 20-day period between March 1 and May 31 of each year, using the notification requirements specified under § 651.29(a). If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(4) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(5) *Notice of initial DAS allocation.* The Regional Director will attempt to notify all owners of vessels that are deemed eligible to be issued a limited access permit pursuant to § 651.4(a)(6) based on data, information, and other evidence available to the Regional Director.

(6) *Appeal of DAS allocation*—(i) *Appeal criteria.* Initial allocations of Individual DAS to a vessel may be appealed to the Regional Director within 30 days of receipt of the notice of a vessel's allocation. Any such appeal must be in writing and be based on one or more of the following grounds:

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

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(7) *Status of vessels pending appeal of DAS allocations.* All vessels, while appealing their Individual-DAS allocation, may fish under the Fleet-DAS program and are subject to all requirements applicable to the Fleet-DAS program unless otherwise exempted, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for multispecies finfish shall be counted against the Individual-DAS allocation that the vessel may ultimately receive. If, before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal, the excess days will be subtracted from the vessel's allocation of days in 1995.

(8) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(i) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(ii) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(c) *Fleet Days-at-Sea program.* (1) Beginning on May 1, 1994, all vessels issued a limited access permit that are longer than 45 ft (13.7 m) in length that have not elected to fish under the Individual DAS program as specified in paragraph (a) of this section shall be subject to the following effort-control requirements:

(i) *Days in which vessel may not possess more than 500 lbs (226.8 kg) of regulated species.* (A) During each year, beginning with 1994, vessel owners of all such vessels must declare periods of time out of the multispecies fishery totaling at least the minimum number of days listed for each such year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20-consecutive-day period must be declared between March 1 and May 31 of each year:

Year	Days out of multispecies fishing
1994	80
1995	80
1996	128
1997	165
1998	200
1999	233

(B) During each period of time declared, the applicable vessel may not possess more than 500 lbs (226.8 kg) of multispecies.

(C) Adjustments to the schedule of days out of the multispecies fishery, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(D) *Procedure for declaring days.* Fleet DAS participants shall declare their periods of required time under paragraph (c)(1)(i) of this section, following the notification procedures specified in § 651.29(b).

(E) If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the year.

(ii) *Layover day requirement.* (A) Fleet DAS participants engaged in a fishing trip that is not during the period of time declared pursuant to paragraph (c)(1)(i) of this section and that is longer than 24 hours must tie-up at the dock at the end of such trip for a period equal to half the time of the DAS accrued on the trip,

based on hourly increments, as recorded through the notification procedures specified in § 651.29(b).

(B) *Accrual of DAS.* DAS under the card or call-in notification systems, described in § 651.29(b) and (d), respectively, shall accrue in hourly increments with all partial hours counted as full hours. A DAS, under either the card or call-in notification system, begins once the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director. A DAS ends under either the card or phone notification system, when after returning to port, the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director.

(C) Tie-up time begins to accrue when the Regional Director is notified through the monitoring system that the trip is ended.

(D) A vessel that remains tied to the dock beyond the time required will not be credited with the additional time.

(E) A vessel required to be tied-up at the dock under this part may not fish or leave the dock under any capacity during the tie-up period unless authorized by the Regional Director.

(2) [Reserved]

(d) *Exemptions from effort reduction program* —(1) *Small boat.*

(i) Beginning on May 1, 1994, vessels issued a limited access permit under § 651.4(a) that are 45 ft (13.7 m) or less in length overall, except vessels using sink gillnet gear, will be exempt from the effort reduction program if the vessel and vessel owner comply with the following:

(A) Determination of the length will be through the measurement along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern;

(B) To be eligible for the small-boat exemption, vessels for which construction is begun after May 1, 1994, must be 45 feet (13.7 m) or less in length and must be constructed such that the product of the overall length divided by the beam will not be less than 2.5; and

(C) The measurement of length overall may be verified using U.S. Coast Guard documentation if it is dated after 1984. Otherwise, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by state registration papers if such documentation accurately states the vessel's length overall as required. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(ii) Vessels fishing under the small boat exemption must bring all gear back to port at the conclusion of a fishing trip, except gillnets and gear not intended to fish for multispecies finfish, such as lobster.

(iii) Adjustments to the small-boat exemption, including changes to the length requirement, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(2) *Sink gillnet vessels.* (i) A sink gillnet vessel greater than 45 ft (13.7 m) in length is exempt from the DAS effort reduction program of this part on all fishing trips during which the vessel fishes for multispecies exclusively with sink gillnet gear, and does not have other gear available for immediate use as described in § 651.20(c)(4), if the vessel owner or owner's authorized representative complies with monitoring requirements set forth in § 651.28(c), unless effort reduction measures are implemented pursuant to subpart C of this part.

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land or does possess or land more than 500 lbs (226.8 kg) of regulated multispecies with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year may fish under and shall be subject to the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section; provided, however, that the owner of such vessel must request to fish under the Individual DAS program or the Fleet DAS program, as applicable, at the time such vessel applies for and is issued a Limited Access permit, and that the vessel complies with the requirement to take periods of time out of the multispecies fishery as required under § 651.22.

(iii) A sink gillnet vessel 45 ft (13.7 m) or less in length is exempt from the DAS effort reduction program of this part unless effort reduction measures are implemented pursuant to subpart C of this part.

(3) *Hook-gear-only vessels.* Vessels issued a limited access permit under § 651.4(a) and fishing with per trip, or possessing on board the vessel, no more than 4,500 rigged hooks are exempt from the effort reduction program of this part, subject to the requirements specified in § 651.33.

(e) *Scallop dredge vessels.* Beginning on May 1, 1994, scallop dredge vessels issued a limited access permit under § 650.4(a), except for combination vessels, may not participate in and are not subject to the DAS program and may not possess regulated species in excess of the possession limit specified under § 651.27(a).

§ 651.23 Minimum fish size.

(a) The minimum fish sizes (total length) for the following species are as follows:

Species	Inches
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (27.9 cm)
Redfish	9 (22.9 cm)

(b) The minimum lengths specified by paragraph (a) of this section shall be measured on a straight line from the tip of the snout to the end of the tail.

(c) The minimum size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in this paragraph (c), and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(d) *Exception.* (1) Each person on board a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lbs (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(e) *Adjustments of minimum size.* (1) In 1994, or at anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) The minimum fish size for yellowtail flounder, witch flounder, and

American plaice will be determined from the best available mesh selectivity studies applicable to 5½-inch (13.97-cm) diamond mesh.

(3) The minimum fish size for cod, haddock, pollock, and redfish will be determined from the best available mesh selectivity studies applicable to 6-inch (15.24-cm) diamond mesh.

(4) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented in 1995, or at anytime thereafter, following the procedures specified in subpart C of this part.

(5) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C of this part.

§ 651.24 Experimental fishing.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the multispecies finfish resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the multispecies finfish resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity shall be subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

§ 651.25 Gear-marking requirements.

(a) Bottom-tending fixed gear, including but not limited to gillnets and longlines, designed for, capable of, or fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear need display only the standard 12-inch (30.5 cm) tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gillnets must not exceed 6,600 feet (2,011.7 m) between the end buoys.

(d) In the Gulf of Maine/Georges Bank regulated mesh area specified in § 651.20(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30 degrees from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§ 651.26 Flexible Area Action System.

(a) The Chair of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chair will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Chair will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chair will request the Regional Director to publish a notification in the **Federal Register**. The request must include a complete draft of the notification. The Secretary must file the notification at the Office of the Federal Register within 1 business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notification will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chair's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates, and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action that may be taken, limited to the various management measures currently implemented by the FMP;

(12) The Council's initiation of analysis of the impacts;

(13) The date (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14, the following activities will take place:

(1) The Regional Director will prepare a fact-finding report that will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

(2) After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he/she will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS' capabilities for administering, monitoring, and enforcing any of the proposed options.

(3) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

(e) By Day 21, provided that it is 6 days after release of the fact-finding

report required by paragraphs (c)(1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact-finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh-size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure, but already contained within and implemented by the FMP;

(2) Between 3 weeks and 6 months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities. If the Committee recommends that action is not warranted, and the Regional Director concurs, notification will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the Committee's decision.

(f) By Day 23, the Regional Director will either accept or reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notification in the **Federal Register**, to be filed with the Office of the Federal Register by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal multispecies permits. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report, and the public comments, are no longer in existence, he will terminate the action by notification in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day that is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c)(1) and (d) of this section have been made available for public review.

§ 651.27 Possession limits.

(a) *Multispecies possession limit.* (1) Beginning on May 1, 1994, vessels subject to effort control programs specified in § 651.22 and persons issued a limited access permit under § 651.4(a), that are not fishing under the DAS program, or have declared out of the DAS program, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, vessels issued hook-gear-only permits that are fishing with gear other than hook gear, sink gillnet vessels greater than 45 ft (13.7 m) in length that are fishing with gear other than gillnet gear, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on a vessel, or landing per trip, more than 500 lbs (226.8 kg) of regulated species.

(2) Vessels subject to the multispecies possession limit shall have on board the vessel at least one standard box or one standard tote.

(3) The regulated species stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the regulated species in a standard box or standard tote if requested by an authorized officer.

(4) The possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

(b) *Haddock possession limits.*—(1) Scallop dredge vessels.

(i) No person owning or operating a scallop dredge vessel issued a permit under § 651.4 may land, or possess on board a vessel, haddock.

(ii) No person operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ.

(2) *Other vessels.*—(i) No person owning or operating a vessel issued a permit under § 651.4 may land, or possess on a vessel, more than 500 lbs (226.8 kg) of haddock.

(ii) No person may possess on a vessel more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ.

(iii) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(iv) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(v) The haddock possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access vessels.* By May 1, 1994, unless otherwise authorized or required by the Regional Director under § 651.29(c), vessel owners electing to fish under the Individual DAS program specified in § 651.22(a), and combination vessels, must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. Such vessel owners must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. If a vessel has already been issued a limited access multispecies permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to install an operational VTS unit, provide documentation that the unit is operational, and provide such documentation to the Regional Director. This VTS unit must be part of an

approved VTS as specified in paragraph (a)(1) of this section.

(1) *Approval.* The Regional Director will annually approve VTSs that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VTSs will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

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

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

(ii) VTS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions;

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

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

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

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

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

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

(ix) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc).

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

(4) *Presumption.* If a vessel's VTS unit fails to transmit an hourly signal of the vessel's position, the vessel shall be presumed to be fishing under the DAS program for that day, or fraction thereof, for as long as the unit fails to transmit a signal. A preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the multispecies finfish fishery, as specified in §§ 651.22 and 651.29, or was not at sea, will be sufficient to rebut the presumption.

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

(6) *Access.* As a condition to obtaining a limited access permit, all vessel owners must allow NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS unit at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the system or unit's:

(i) Ability to operate properly;

(ii) Signal; or

(iii) Accuracy of computing the vessel's position fix.

(b) *Fleet DAS and other limited access vessels*—(1) *Requirements.* Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) who are participating in a DAS program and who are required to, or have chosen to, provide notification without using a VTS, shall be subject to the call-in requirements specified in § 651.29(c).

(2) *Card notification.* [Reserved.]

(c) *Sink gillnet DAS vessels.* Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) and who hold permits to participate in either the individual or fleet DAS program and the sink gillnet exemption program under § 651.22(d)(2) are subject to the following requirements:

(1) The vessel owner or owner's representative shall notify the Regional Director prior to leaving port at the beginning of each sink gillnet trip that it will be participating in the sink gillnet fishery by providing notification under § 651.29(b)(1).

(2) Upon returning to port, at the end of each sink gillnet trip, the vessel owner or authorized representative shall notify the Regional Director by providing notice as specified under § 651.29(b)(1).

(3) If the owner of a sink gillnet vessel greater than 45 ft (13.7 m) in length intends to fish for regulated multispecies with gear other than sink gillnet gear on a fishing trip, the owner or the owner's authorized representative shall provide notification of the change in fisheries following the procedures of § 651.29(b)(1). and shall comply with the effort reduction program set forth in § 651.22.

§ 651.29 DAS notification program.

(a) *VTS notification.* Beginning on May 1, 1994, unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of multispecies vessels with limited access permits that have elected to or are required to use a VTS system shall be subject to the following:

(1) Multispecies vessels at sea are presumed to be fishing under the DAS allocation program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, or declares it into the sink gillnet fishery as required in § 651.28(c), by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (c) of this section.

(3) Notification that the vessel is not under the DAS program must be

received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* (1) Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) who are participating in a DAS program and who are required to, or have chosen to, provide notification without using a VTS, shall be subject to the call-in requirements specified in paragraph (c) of this section.

(2) *Card notification.* [Reserved.]

(c) *Alternative call-in system of notification.* The Regional Director may authorize or require, on a temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. Vessel owners authorized or required by the Regional Director, or required by § 651.28(c), to provide notification by a call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program, or in the sink gillnet fishery as required under § 651.28(c), by calling 508–281–9335 or faxing 508–281–9135, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS begins once the call has been received and confirmation given by the Regional Director.

(3) Upon returning to port, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 508–281–9335 or by faxing 508–281–9135, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, and that the trip has ended.

(4) A DAS ends when the call has been received and confirmation given by the Regional Director.

(5) Any vessel that possesses or lands more than 500 lbs (226.8 kg) of regulated species shall be deemed in the DAS program for purposes of counting DAS, whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(6) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

§ 651.30 Transfer-at-sea.

(a) Vessels permitted under § 651.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel, unless authorized in writing by the Regional Director.

(b) All vessels are prohibited from transferring or attempting to transfer multispecies finfish from one vessel to another vessel.

§ 651.31 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a Federal multispecies permit.

(b) Owners of vessels selected for observer coverage must notify the appropriate NMFS Regional or Northeast Fisheries Science Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any multispecies finfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

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

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

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel, upon request, to determine the vessel's position;

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

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *General.* In addition to the measures specified in §§ 651.20 and 651.21, vessels using, or possessing on board the vessel, sink gillnet gear are subject to the following restrictions:

(1) *Gear removal.* (i) All vessels must remove all their sink gillnet gear from EEZ waters for the number of days per month specified in the schedule below. All vessels issued a Federal Multispecies Limited Access Permit must remove all of their sink gillnet gear from all waters for the number of days per month specified in the schedule below. The Regional Director, in consultation with the Council, will provide the specific dates per month during which all sink gillnets must be removed from the regulated mesh areas according to the schedule below. The days per month shall be consecutive days on the dates of the month specified by the Regional Director according to paragraph (a)(2) of this section.

Year	Days/ month	Total days/per year
1994	4	48
1995	8	96
1996	8	96
1997	12	144
1998	16	192

(2) Annual notification of the specific dates will be sent to all vessels issued a permit under § 651.4.

(3) During the time sink gillnet gear is removed from the water, the vessel may use other gear in accordance with the regulations of this part, provided that the vessel provides adequate notification as specified in § 651.28(c) and complies with the effort reduction program set forth in § 651.22.

(b) *Framework adjustment.* (1) By August 1 of each year, the Council's Harbor Porpoise Review Team (HPRT) shall complete an annual review of harbor porpoise bycatch and abundance data in the sink gillnet fishery, evaluate the impacts on other measures that reduce harbor porpoise take, and may make recommendations on other "reduction-of-take" measures.

(2) At the first Council meeting following the HPRT annual meeting, the team shall make recommendations to the Council as to what adjustments or changes, if any, to the "reduction-of-take" measures should be implemented.

(3) The Council may request at any time that the HPRT review and make recommendations on any alternative "reduction-of-take" measures or develop additional "reduction-of-take" proposals.

(4) Upon receiving the recommendations of the HPRT, the Regional Director will publish notification in the **Federal Register** of any recommended changes or additions to the "reduction-of-take" measures and provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions.

(5) After receiving public comment, the Council shall determine whether to recommend changes or additions to the

"reduction-of-take" measures at the second Council meeting following the meeting at which it received the HPRT's recommendations.

(6) If the Council decides to recommend changes or additions to the "reduction-of-take" measures, it shall make such a recommendation to the Regional Director, which must include supporting rationale, and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(d).

(7) The Regional Director may accept, reject, or, with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule. If the Regional Director does not approve the Council's specific recommendation, he/she must provide in writing to the Council the reasons for his/her action prior to the first Council meeting following publication of his/her decision.

§ 651.33 Hook-gear-only vessel requirements.

Beginning on May 1, 1994, vessels, and persons on such vessels, fishing under the hook-gear-only permit specified in § 651.4(b), whether or not the vessel has also been issued a limited access permit under § 651.4(a), are subject to the following requirements throughout the year for which the permit is issued:

(a) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel while the vessel and persons on the vessel are in possession of or landing more than 500 lbs (226.8 kg) of, or fishing for regulated species at any time during the year for which the hook-gear-only permit is issued.

(b) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks.

(1) A hook is considered to be rigged to be fished if the hook and gangion is secured to the ground line of the trawl, whether or not it is baited.

(2) An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is considered to be a replacement hook and is not counted toward the 4,500 hook limit.

(3) A "snap-on" hook is considered to be a replacement hook if it is not rigged or baited.

(c) Adjustments to the hook exemption, hook size and style, and restrictions on gear used, such as crucifiers, in the hook fishery may be implemented or considered by the Council under subpart C of this part.

Subpart C—Framework Adjustments to Management Measures

§ 651.40 Framework specifications.

(a) At least annually, the Regional Director will provide the Council with information on the status of the multispecies finfish resource and provide harvest targets for the upcoming year. The annual harvest targets shall be determined by the Stock Assessment Review Committee and shall be based on the projected fishing mortality rate reductions required under § 651.22 for the principal multispecies stocks (Gulf of Maine cod, Georges Bank cod, Georges Bank haddock, Georges Bank yellowtail flounder, and Southern New England yellowtail flounder).

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the multispecies finfish resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 651.22, to achieve the target fishing mortality rate and the annual harvest targets determined from that rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

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

(1) DAS changes;
(2) Effort monitoring;
(3) Data reporting;
(4) Possession limits;
(5) Gear restrictions;
(6) Closed areas;
(7) Permitting restrictions;
(8) Crew limits;
(9) Minimum fish sizes;
(10) Onboard observers;
(11) Minimum hook size and hook style;
(12) The use of crucifiers in the hook fishery;
(13) Any other management measures currently included in the FMP.

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

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

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

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

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

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

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final

rule based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or

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

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

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

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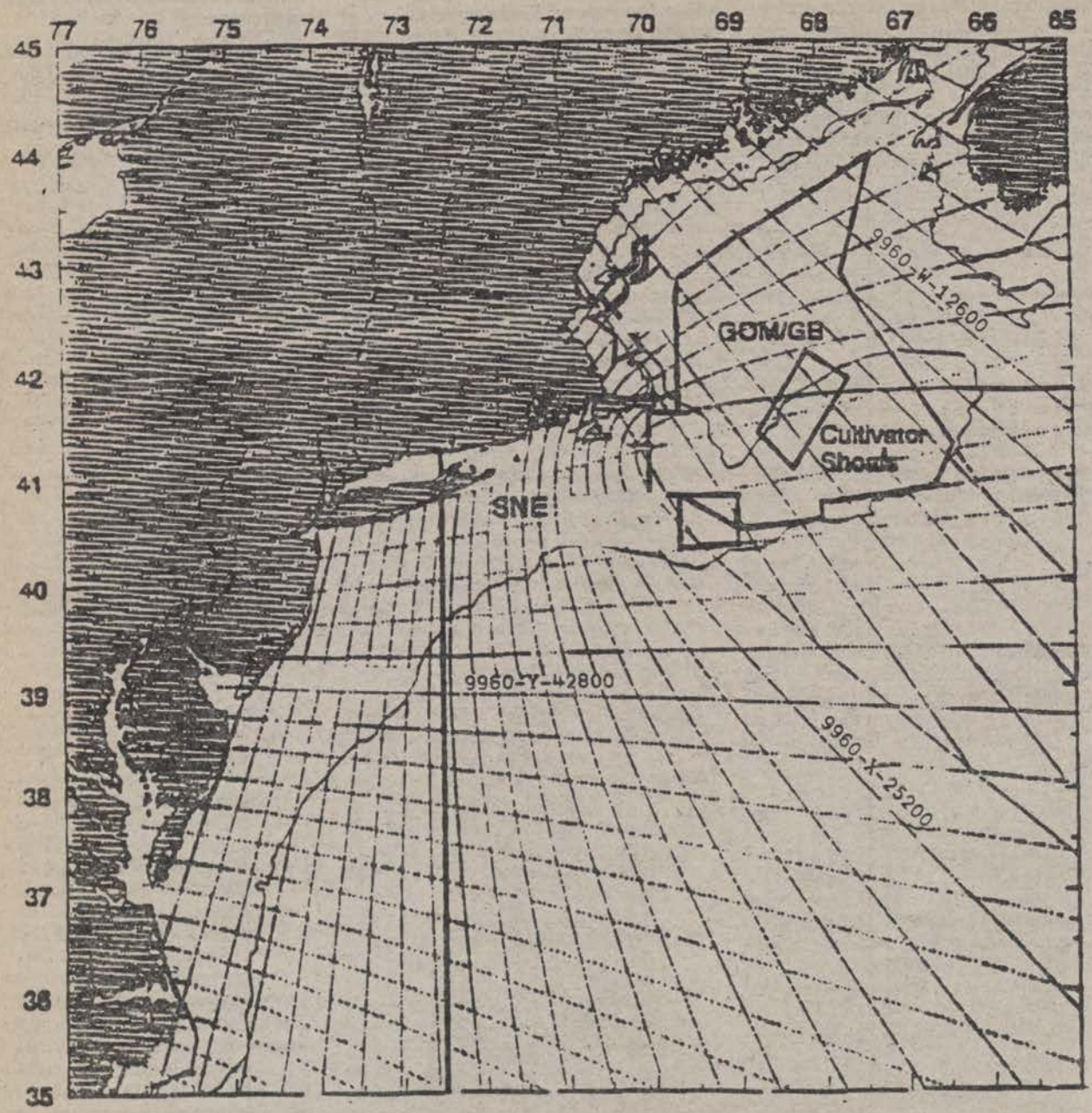


Figure 1 to part 651: Regulated Mesh Areas.

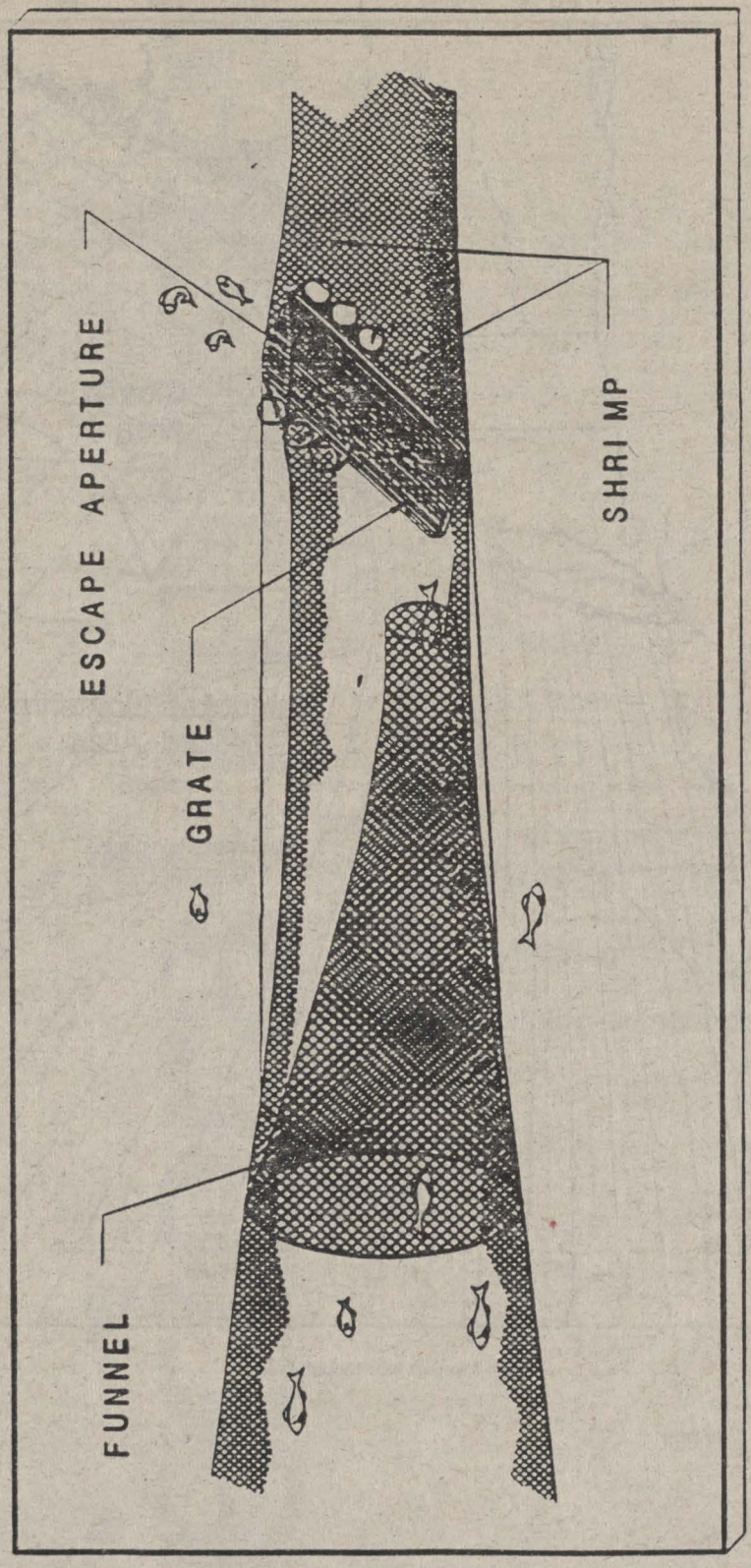


Figure 2 to part 651: Nordmore grate.

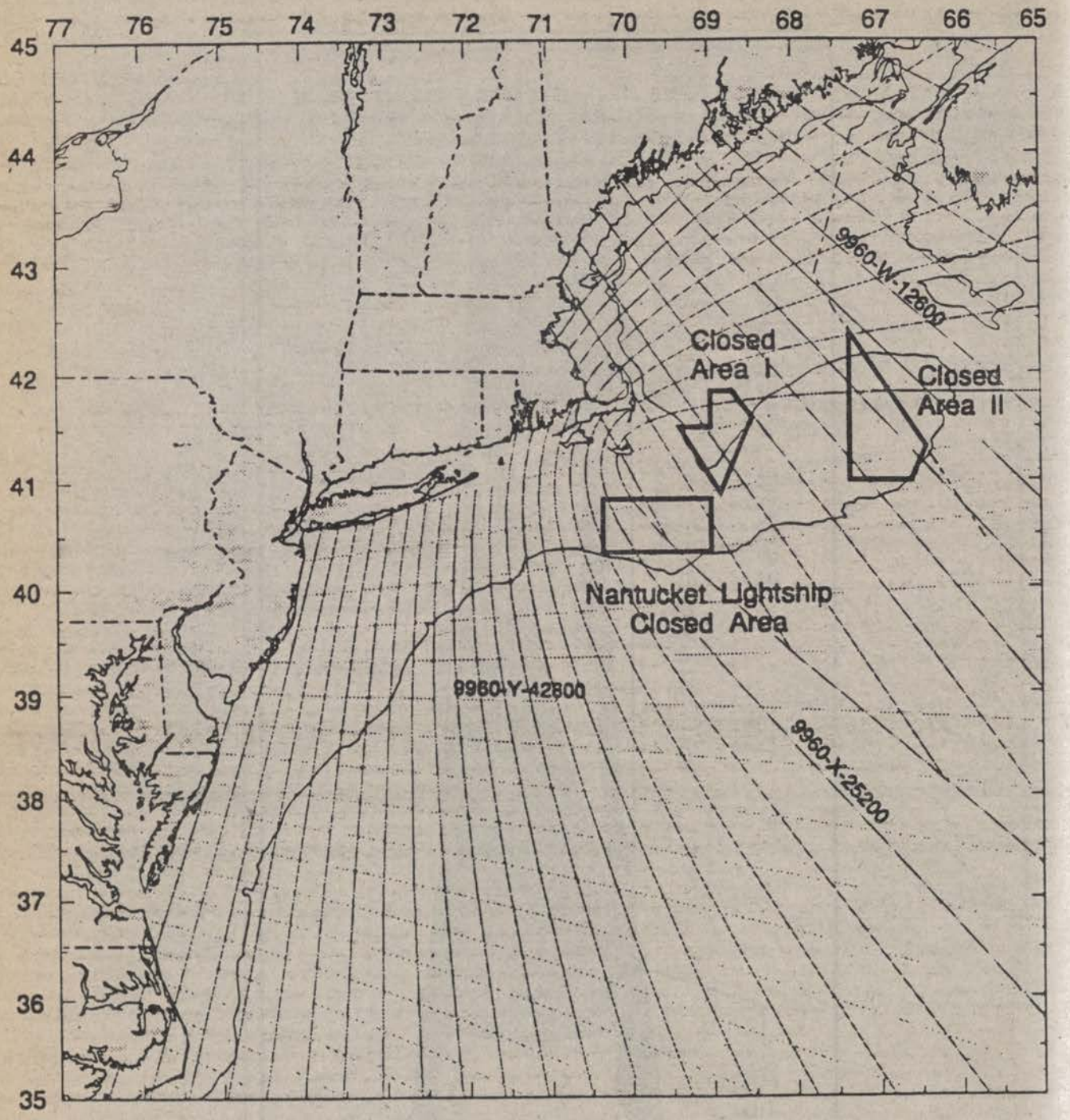


Figure 3 to part 651: Closed Areas.

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