

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation as this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the Instruction, an “Environmental Analysis Checklist” is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. From September 28, 2007 through April 30, 2008, § 117.213 is amended by suspending paragraph (a) and adding a temporary paragraph (g) to read as follows:

#### § 117.213 Connecticut River.

\* \* \* \* \*

(g) The draws shall open on signal; except as follows:

(1) From 7:30 a.m. to 8:30 a.m., noon to 12:15 p.m., 12:45 p.m. to 1 p.m., and 4:45 p.m. to 5:45 p.m., the draws need not be opened.

(2) The draw of the Ferry Street Bridge, mile 0.7, at New Haven, shall maintain one of the two moveable bascule bridge spans in the full open position at all times for the passage of vessel traffic. The second moveable bascule bridge span may remain in the closed position at all times.

(3) From 11 p.m. to 7 a.m., the draw of the Grand Avenue bridge, Quinnipiac River, shall open on signal if at least one hour notice is given to the drawtender at the Ferry Street bridge. In the event that the drawtender is at the Chapel Street bridge, a delay of up to an additional hour may be expected.

(4) From 9 p.m. to 5 a.m., the draw of the Chapel Street bridge, Mill River, shall open on signal if at least one hour notice is given to the drawtender at Ferry Street bridge. In the event that the drawtender is at the Grand Avenue bridge, a delay of up to an additional hour may be expected.

Dated: August 10, 2007.

**Timothy V. Skuby,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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**BILLING CODE 4910–15–P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070627217–7218–01]

RIN 0648–AV70

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Region Standardized Bycatch Reporting Methodology Omnibus Amendment

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

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

**SUMMARY:** NMFS proposes regulations to implement the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment (SBRM Amendment) to the Fishery Management Plans (FMPs) of the Northeast Region, developed by the Mid-Atlantic and New England Fishery Management Councils (Councils). The SBRM Amendment would establish an SBRM for all 13 Northeast Region FMPs, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The proposed measures include: Bycatch reporting and monitoring mechanisms; analytical techniques and allocation of at-sea fisheries observers; an SBRM performance standard; a review and reporting process; framework adjustment and annual specifications provisions; a prioritization process; and provisions for industry-funded observers and observer set-aside programs.

**DATES:** Comments must be received on or before September 20, 2007.

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

- E-mail:

*SBRM.Amend.PR@noaa.gov*. Include in the subject line the following identifier: “Comments on the Proposed Rule to implement the SBRM Omnibus Amendment.”

- Federal e-rulemaking portal: <http://www.regulations.gov>.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on the Proposed Rule to implement the SBRM Omnibus Amendment.”

- Fax: (978) 281-9135

Copies of the SBRM Amendment, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790; and from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**  
Michael Pentony, Senior Fishery Policy Analyst, 978-281-9283.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 303(a)(11) of the Magnuson-Stevens Act requires that all FMPs “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.” In 2004, several conservation organizations challenged the approval of two major amendments to Northeast Region FMPs. In ruling on these suits, the U.S. District Court for the District of Columbia found that the FMPs did not clearly establish an SBRM as required under the relevant section of the Magnuson-Stevens Act and remanded the amendments back to the agency to fully develop and establish the required SBRM. In particular, the Court found that the amendments (1) failed to fully evaluate reporting methodologies to assess bycatch, (2) did not mandate an SBRM, and (3) failed to respond to potentially important scientific evidence.

In response, the Councils, working closely with NMFS, undertook development of a remedy that would address all Northeast Region FMPs. In January 2006, development began on the Northeast Region Omnibus SBRM Amendment. This amendment covers 13 FMPs, 39 managed species, and 14 types of fishing gear. The purpose of the amendment is to: Explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; determine whether these methods and processes need to be modified and/or supplemented; establish standards of precision for bycatch estimation for all Northeast Region fisheries; and, thereby, document the SBRM established for all fisheries managed through the FMPs of the Northeast Region. The amendment also responds to the “potentially important scientific evidence” cited by

the Court in the two decisions referenced above.

The Northeast Region SBRM Amendment would establish an SBRM comprised of seven elements: (1) The methods by which data and information on discards are collected and obtained; (2) the methods by which the data obtained through the mechanisms identified in element 1 are analyzed and utilized to determine the appropriate allocation of at-sea observers; (3) a performance measure by which the effectiveness of the Northeast Region SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days; (4) a process to provide the Councils with periodic reports on discards occurring in Northeast Region fisheries and on the effectiveness of the SBRM; (5) a measure to enable the Councils to make changes to the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments; (6) a process to provide the Councils and the public with an opportunity to consider, and provide input into, the decisions regarding prioritization of at-sea observer coverage allocations; and (7) to implement consistent, cross-cutting observer service provider approval and certification procedures and to enable the Councils to implement either a requirement for industry-funded observers or an observer set-aside program through a framework adjustment rather than an FMP amendment.

##### **Bycatch Reporting and Monitoring Mechanisms**

This element addresses the methods by which data and information on discards occurring in Northeast Region fisheries would be collected and obtained. The amendment proposes to maintain the status quo. The Northeast Region SBRM would employ sampling designs developed to minimize bias to the maximum extent practicable. The Northeast Fisheries Observer Program (NEFOP) would serve as the primary mechanism to obtain data on discards in all Northeast Region commercial fisheries managed under one or more of the subject FMPs. All subject FMPs would continue to require vessels permitted to participate in said fisheries to carry an at-sea observer upon request, and all data obtained by the NEFOP under this SBRM would be collected according to the techniques and protocols established and detailed in the Fisheries Observer Program Manual and the Biological Sampling Manual. Data collected by the NEFOP would include, but not be limited to, the following

items: Vessel name; date/time sailed; date/time landed; steam time; crew size; home port; port landed; dealer name; fishing vessel trip report (FVTR) serial number; gear type(s) used; number/amount of gear; number of hauls; weather; location of each haul (beginning and ending latitude and longitude); species caught; disposition (kept/discarded); reason for discards; and weight of catch. These data would be collected on all species of biological organisms caught by the fishing vessel and brought on board, including species managed under the subject FMPs, but also including species of non-managed fish, invertebrates, and marine plants. To obtain information on discards occurring in recreational fisheries subject to a Northeast Region FMP, the Northeast Region SBRM would fully incorporate, to the extent practicable and appropriate for the Region, all surveys and data collection mechanisms implemented by NMFS and affected states as a result of the agency-wide redesign of the Marine Recreational Fisheries Statistics Survey (MRFSS) Program.

##### **Analytical Techniques and Allocation of At-sea Fisheries Observers**

This element addresses the methods by which the data obtained through the mechanisms included above would be analyzed and utilized to determine the appropriate allocation of at-sea observers across the subject fishing modes. The amendment proposes to substantially expand and refine the status quo methods to fully incorporate all managed species and all relevant fishing gear types in the Northeast Region. At-sea fisheries observers would, to the maximum extent possible and subject to available resources, be allocated and assigned to fishing vessels according to the procedures established through the amendment. All appropriate filters identified in the amendment would be applied to the results of the analysis to determine the observer coverage levels needed to achieve the objectives of the SBRM.

##### **SBRM Performance Standard**

The amendment proposes to ensure that the data collected under the Northeast Region SBRM are sufficient to produce a coefficient of variation (CV) of the discard estimate of no more than 30 percent, in order to ensure that the effectiveness of the Northeast Region SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days. Each year, the Regional Administrator and the Science and Research Director would, subject to any

external operational constraints, allocate at-sea observer coverage to the applicable fisheries of the Northeast Region sufficient to achieve a level of precision (measured as the CV) no greater than 30 percent for each applicable species and/or species group, subject to the use of the filters noted above.

#### **SBRM Review and Reporting Process**

The amendment proposes to require an annual report on discards occurring in Northeast Region fisheries to be prepared by NMFS and provided to the Councils, and also to require a report every 3 years that evaluates the effectiveness of the Northeast Region SBRM. Every 3 years, the Regional Administrator and the Science and Research Director would appoint appropriate staff to work with staff appointed by the Executive Directors of the Councils to obtain and review available data on discards and to prepare a report assessing the effectiveness of the Northeast Region SBRM. This report would include, at a minimum: (1) A review of the recent levels of observer coverage in each applicable fishery; (2) a review of recent observed encounters with each species in each fishery, and a summary of observed discards by weight; a review of the CV of the discard information collected for each fishery; (4) an estimate of the total discards associated with each fishery; (5) an evaluation of the effectiveness of the SBRM at meeting the performance standard for each fishery; (6) a description of the methods used to calculate the reported CVs and to determine observer coverage levels, if those methods are different from those described and evaluated in the SBRM Amendment; (7) an updated assessment of potential sources of bias in the sampling program and analyses of accuracy; and (8) an evaluation of the implications for management of the discard information collected under the SBRM, for any cases in which the evaluation performed for item 5 indicates that the performance standard is not met. Once each year, the Science and Research Director would present to the Councils a report on catch and discards occurring in Northeast Region fisheries, as reported to the NEFOP by at-sea fisheries observers. This annual discard report would include: (1) The number of observer sea days scheduled for each fishery, by area and gear type, in each quarter; (2) the percent of total trips observed, by gear type, in each quarter; (3) the distribution of sea sampling trips by gear type and statistical area in each fishery; (4) the observed catch and discards of each

species, by gear type and fishery, in each quarter; and (5) the observed catch and discards of each species, by gear type and fishery, in each statistical area.

#### **Framework Adjustment and/or Annual Specification Provisions**

The amendment proposes a measure to enable the Councils to make changes to certain elements of the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments. All subject FMPs would provide for an efficient process to modify aspects of the Northeast Region SBRM, as relates to each specific FMP, should the need arise and the appropriate Council determine that a change to the SBRM is warranted and needed to address a contemporary management or scientific issue. Depending on the provisions of each FMP, changes to the SBRM may be effected either through a framework adjustment to the FMP or through annual or periodic specifications. Such changes to the SBRM may include modifications to the CV-based performance standard, the means by which discard data are collected/obtained in the fishery, reporting on discards or the SBRM, or the stratification (modes) used as the basis for SBRM-related analyses. Such changes may also include the establishment of a requirement for industry-funded observers and/or observer set-aside provisions.

#### **Prioritization Process**

The amendment proposes a process to provide the Councils and the public with an opportunity to consider, and provide input into, the decisions regarding prioritization of at-sea observer coverage allocations, if the expected resources necessary may not be available. In any year in which external operational constraints would prevent NMFS from fully implementing the required at-sea observer coverage levels, the Regional Administrator and Science and Research Director would consult with the Councils to determine the most appropriate prioritization for how the available resources should be allocated. In order to facilitate this consultation, in these years, the Regional Administrator and the Science and Research Director would provide the Councils, at the earliest practicable opportunity: (1) The at-sea observer coverage levels required to attain the SBRM performance standard in each applicable fishery; (2) the coverage levels that would be available if the resource shortfall were allocated proportionately across all applicable fisheries; (3) the coverage levels that

incorporate the recommended prioritization; and (4) the rationale for the recommended prioritization. The recommended prioritization should be based on: Meeting the data needs of upcoming stock assessments; legal mandates of the agency under other applicable laws, such as the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA); meeting the data needs of upcoming fishery management actions, taking into account the status of each fishery resource; improving the quality of discard data across all fishing modes; and/or any other criteria identified by NMFS and/or the Councils. The Councils may choose to accept the proposed observer coverage allocation or to recommend revisions or additional considerations for the prioritized observer allocations ultimately adopted and implemented by the Regional Administrator and the Science and Research Director.

#### **Industry-funded Observers and Observer Set-aside Program Provisions**

The amendment proposes to implement consistent, cross-cutting observer service provider approval and certification procedures and to enable the Councils to implement either a requirement for industry-funded observers and/or an observer set-aside program through a framework adjustment, rather than an FMP amendment.

#### **Classification**

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

A notice of availability of the Draft EA/RIR, which analyzed the impacts of all the measures under consideration in the SBRM Amendment, was published at 72 FR 41047, July 26, 2007.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would modify the regulations at 50 CFR part 648 to require additional information be prepared by NMFS and provided to the

Mid-Atlantic and New England Fishery Management Councils, and authorize said Councils to modify certain elements of the Northeast Region SBRM through the use of framework adjustments and/or annual specifications rather than full FMP amendments. The Northeast Region Omnibus SBRM Amendment establishes a more comprehensive methodology that NMFS must follow in determining the appropriate allocations of at-sea fisheries observers and in collecting and analyzing bycatch information in the subject fisheries. As such, this proposed rule only addresses a limited number of administrative aspects of the proposed SBRM. These administrative changes are intended to ensure high quality data are available for use in stock assessments and in management decisions, consistent with section 303(a)(11) and National Standards 1 and 2 of the Magnuson-Stevens Act. Therefore, this proposed rule would not impose significant new direct or indirect economic impacts on small entities, as all affected entities are already subject to the observer requirements stipulated at § 648.11. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 13, 2007.

**John Oliver,**

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

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

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

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

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

2. In § 648.11, paragraphs (h) and (i) are revised to read as follows:

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

\* \* \* \* \*

(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to vessel owners and shall be posted on

the NMFS/NEFOP website at <http://www.nefsc.noaa.gov/femad/fsb/>.

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

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

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

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

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

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

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

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a fishery observer services provider as set out under paragraph (h)(2) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including

during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

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

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/NEFOP Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with less than eight individuals will be delayed until further requests make up the full training class size. Requests for training classes must be made 30 days in advance of the requested date and must have a complete roster of trainees at that time.

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

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

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information

pertinent to its participation in the fishery observer program.

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

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing, unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An approved observer service provider must maintain a minimum of eight appropriately trained NEFOP certified observers in order to remain approved; should a service provider cadre drop below eight, the provider must submit the appropriate number of candidates for the next available training class. Failure to do so shall be cause for suspension of their approved status until rectified.

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

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

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

(C) The required observer equipment, in accordance with equipment requirements listed on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, prior to any

deployment and/or prior to NMFS observer certification training; and

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

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

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

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

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Observer

Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

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

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

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

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

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

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

of the event or within 24 hours of learning of the event.

(viii) *Refusal to deploy an observer.*

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

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

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

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

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

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

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

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer

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

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

(ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;

(iii) Evidence of criminal convictions related to:

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

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

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

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

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

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

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

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

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP website specified in paragraph (h)(1) of this section and shall be provided to each approved observer service provider;

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

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the

observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken.

Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

3. Add § 648.18 to subpart A to read as follows:

**§ 648.18 Standardized bycatch reporting methodology.**

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans: Atlantic Bluefish; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Mackerel, Squid, and Butterfish; Monkfish; Northeast Multispecies; Northeast Skate Complex; Sea Scallop; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; Surfclam and Ocean Quahog; and Tilefish.

4. In § 648.21, paragraph (c)(13) is added to read as follows:

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

(c) \* \* \*

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

\* \* \*

5. In § 648.24, paragraph (a)(1) is revised to read as follows:

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

(a) \* \* \*

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or

prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of EFH (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

\* \* \*

6. In § 648.55, paragraph (e)(32) is revised and paragraph (e)(33) is added to read as follows:

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

\* \* \*

(e) \* \* \*

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

(33) Any other management measures currently included in the FMP.

\* \* \*

7. In § 648.77, paragraph (a)(1) is revised to read as follows:

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

(a) \* \* \*

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

prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, suspension or adjustment of the surfclam minimum size limit, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

\* \* \*

8. In § 648.90, paragraphs (a)(2)(i), (a)(2)(iii), (b)(1)(ii), and (c)(1)(i) are revised to read as follows:

**§ 648.90 NE Multispecies assessment, framework procedures and specifications, and flexible area action system.**

\* \* \*

(a) \* \* \*

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives, including changes to the Northeast Region SBRM. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

\* \* \*

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve



the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve

selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and any other management measures currently included in the FMP.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) After a management action has been initiated, the Council 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 analyses 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, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the

hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

\* \* \* \* \*

9. In § 648.96, paragraphs (a), (b)(5), and (c)(1)(i) are revised to read as follows:

**§ 648.96 Monkfish annual adjustment process and framework specifications.**

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year in accordance with paragraph (b)(1) of this section, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports), or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance



with management measures; and any other relevant information.

(b) \* \* \*

(5) *Annual review process.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop options for the upcoming fishing year, as needed, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports), or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, other options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: Closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and other frameworkable

measures included in §§ 648.55 and 648.90.

\* \* \* \* \*

10. In § 648.100, paragraph (a) is revised and paragraph (b)(12) is added to read as follows:

**§ 648.100 Catch quotas and other restrictions.**

(a) *Review.* The Summer Flounder Monitoring Committee shall review each year the following data, subject to availability, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit ( $F_{max}$ ): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) \* \* \*

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

\* \* \* \* \*

11. In § 648.108, paragraph (a)(1) is revised to read as follows:

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

(a) \* \* \*

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish

size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

\* \* \* \* \*

12. In § 648.120, paragraph (a) is revised and paragraph (b)(13) is added to read as follows:

**§ 648.120 Catch quotas and other restrictions.**

(a) *Review.* The Scup Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; discards; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit ( $F_{max}$ ).

(b) \* \* \*

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

\* \* \* \* \*

13. In § 648.140, paragraph (a) is revised and paragraph (b)(12) is added to read as follows:

**§ 648.140 Catch quotas and other restrictions.**

(a) *Review.* The Black Sea Bass Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on  $F_{max}$ ) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) \* \* \*

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

\* \* \* \* \*

14. In § 648.160, paragraph (a) is revised and paragraph (b)(9) is added to read as follows:

**§ 648.160 Catch quotas and other restrictions.**

\* \* \* \* \*

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower. In determining the TAL and other restrictions necessary to achieve the specified F, the Bluefish Monitoring

Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) \* \* \*

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

\* \* \* \* \*

15. In § 648.165, paragraph (a)(1) is revised to read as follows:

**§ 648.165 Framework specifications.**

(a) \* \* \*

(1) *Adjustment process.* After a management action has been initiated, the Council 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 the 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: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports and/or industry-funded observers or observer set-aside programs), and any other management measures currently included in the FMP.

\* \* \* \* \*

16. In § 648.200, paragraph (b) introductory text is revised to read as follows:

**§ 648.200 Specifications.**

\* \* \* \* \*

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review

available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

\* \* \* \* \*

17. In § 648.206, paragraphs (b)(28) and (b)(29) are revised and paragraph (b)(30) is added to read as follows:

**§ 648.206 Framework provisions.**

\* \* \* \* \*

(b) \* \* \*

(28) TAC set-aside amounts, provisions, adjustments;

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

(30) Any other measure currently included in the FMP.

\* \* \* \* \*

18. In § 648.230, paragraphs (a), (b)(4), and (b)(5) are revised and paragraph (b)(6) is added to read as follows:

**§ 648.230 Catch quotas and other restrictions.**

(a) *Process for setting specifications.*

The Spiny Dogfish Monitoring Committee will review the following data at least every 5 years, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure that a target fishing mortality rate specified in the Spiny Dogfish Fishery Management Plan will not be exceeded in each year for which TAL and any other measures are recommended: Commercial and recreational catch data; discards; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) \* \* \*

(4) Trip limits;

(5) Changes to the Northeast Region SBRM, including the CV-based

performance standard, fishery stratification, and/or reports; or  
(6) Other gear restrictions.

\* \* \* \* \*

19. In § 648.237, paragraph (a)(1) is revised to read as follows:

**§ 648.237 Framework provisions.**

(a) \* \* \*

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and

process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside program; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects.

\* \* \* \* \*

20. In § 648.260, paragraph (b) introductory text is revised to read as follows:

**§ 648.260 Specifications.**

\* \* \* \* \*

(b) *Development of specifications.* In developing the management measures and specifications, the PDT shall review at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the

mortality of red crabs; and any other relevant information.

\* \* \* \* \*

21. In § 648.293, paragraphs (a)(1)(xiv) and (xv) are revised and paragraph (a)(1)(xvi) is added to read as follows:

**§ 648.293 Framework specifications.**

(a) \* \* \*

(1) \* \* \*

(xiv) Habitat areas of particular concern,

(xv) Set-aside quotas for scientific research, and

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

\* \* \* \* \*

22. In § 648.321, paragraphs (b)(19) and (b)(20) are revised and paragraph (b)(21) is added to read as follows:

**§ 648.321 Framework adjustment process.**

\* \* \* \* \*

(b) \* \* \*

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

(21) Any other measures contained in the FMP.

\* \* \* \* \*

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