

the submissions are available for viewing and copying in the Public Reference Room, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies may also be purchased from the Commission's copy contractor, International Transcription Service ((202) 857-3800).

List of Subjects

47 CFR Part 73

Political candidates, Radio broadcasting, Television broadcasting.

47 CFR Part 76

Cable television, Political candidates. Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 96-32933 Filed 12-23-96; 12:09 pm]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[Docket No. 961211348-6348-01; I.D. 121196A]

RIN 0648-AH77

Atlantic Shark Fisheries; Limited Access Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement the limited access system contained in proposed Amendment 1 to the Fishery Management Plan for Atlantic sharks (FMP). If approved, Amendment 1 would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. NMFS has determined that the Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan. NMFS is holding public hearings and requesting written comments from the public on this proposed rule. The objective of this amendment is to take a first and significant step to prevent further overcapitalization.

DATES: Written comments on this proposed rule must be received on or before February 18, 1997.

ADDRESSES: Comments on this proposed rule should be sent to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of Amendment 1, which includes an Environmental Assessment (EA) and Regulatory Impact Review (RIR), are available from Margo Schulze, Fishery Biologist, at the same address. See **SUPPLEMENTARY INFORMATION** for hearing locations. Comments regarding the collection-of-information requirement required in this rule should be sent to Margo Schulze and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Margo Schulze or John Kelly, 301-713-2347; fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

Background

The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended, and implemented on April 26, 1993, through regulations found at 50 CFR part 678. The FMP established three species management groups, commercial quotas and recreational bag limits, fishing seasons, mandatory vessel reporting, and required commercial vessel permits (with an earned income requirement). The Atlantic shark fishery has operated under open access.

On February 22, 1994, a notice of control date for entry into the Atlantic shark fishery was published in the Federal Register (59 FR 8457). This notice announced that anyone entering the fishery after that date (the "control date") may not be assured of future access to the fishery if some form of limited access were implemented later.

Currently, there are more vessels permitted in the fishery than are necessary or desirable to harvest the available total allowable catch (TAC). During 1993-96, the number of commercial vessels permitted in the fishery has fluctuated between approximately 1,500 and 2,748 vessels, while the TAC has been harvested by about 100 to 150 vessels (approximately 3 to 5 percent of the permitted fleet).

Need for Limited Access

The creation of a limited access system would be an initial step toward achieving a more reasonable balance between the harvesting capacity of the permitted fleet and the TAC. Implementation of proposed limited access would, at a minimum, prevent further increases in the number of permits in the fisheries that target sharks and would dramatically reduce the number of speculative permit holders (those without significant, documented landings of Atlantic sharks).

While a limited access system alone would not resolve all of the problems associated with open access fisheries (e.g., derby fishing conditions, "the race for fish," market gluts), it would help prevent them from becoming more severe. Additionally, considerable public comment subsequent to the scoping meetings convened by NMFS indicates increased support for limited access from the directed shark fishing industry.

A limited access system would stabilize fleet size and provide an opportunity for NMFS to collect data, conduct studies, and work cooperatively with fishery participants and other constituents to develop a more flexible, permanent, effort control program in the future.

Permit Categories

NMFS proposes to implement a two-tiered commercial fishing permit system in which permits would be classified as "directed" or "incidental." The reason for issuing two types of permits is to define and regulate the directed shark fishery separately from commercial fisheries that target other species but take sharks as bycatch. Only persons holding directed fishery permits would be eligible to participate in directed fisheries under the management measures already established, while those holding incidental permits would be restricted to the bycatch fishery with more restrictive management measures. NMFS proposes to restrict access to both the directed and incidental shark fisheries.

Eligibility Criteria

Only person or entities that held a shark permit at any time from July 1, 1994, through December 31, 1995, who have documented landings equal to or above the specified directed or incidental threshold levels of historical participation in the shark fishery, who meet the current earned income requirement, and who own a shark-permitted vessel at the time of

publication of the final rule would receive a directed or incidental commercial permit, respectively.

It is considered that catch histories belong to current permit holders rather than to vessels; i.e., if a shark permit holder sells one vessel and buys another, he/she retains the history of the vessel sold and does not acquire the history of the vessel purchased. Thus, it is considered that persons or entities purchasing existing shark vessels have not also purchased that vessel's catch history (since the fishery is currently open access, it would be imprudent for someone to pay money for a catch history from which he/she may never benefit). However, the establishment of a control date by NMFS has changed this assumption as several vessels were purchased after the control date with stipulations that the catch history of the purchased vessel was purchased as well. Accordingly, NMFS will accept legal documentation of transfers of catch histories in the determination of eligibility.

These eligibility criteria are proposed because the majority of existing shark permit holders have not participated in the fishery (have not had significant reported landings of sharks). If all current shark permit holders were to be allowed future participation in the commercial shark fishery, there would be potential to reach or even to exceed greatly the TAC in a short time. Given the overfished status of large coastals and the fully fished status of pelagics and small coastals, exceeding the TAC could have substantial long-term negative impacts on these resources.

For the directed fishery, NMFS proposes a minimum landings threshold of 250 sharks from January 1, 1991, through February 21, 1994, and 125 sharks from February 22, 1994 (the control date), through June 30, 1995 (which is equivalent to having landed sufficient shark each year on average to earn \$5,000 per year in gross revenue). NMFS estimates that 134 vessels would be eligible for directed shark permits under this landings criteria.

For the incidental fishery, NMFS proposes a minimum landings threshold of three sharks from January 1, 1991, through February 21, 1994, and two sharks from February 22, 1994 (the control date), through June 30, 1995. NMFS estimates that 279 vessels would be eligible for incidental shark permits under this landings criteria.

If a vessel were sold after the control date and its landings history were included specifically in the written sales agreement, such landings would accrue to the purchaser (and no longer to the seller) for purposes of qualifying

for a directed or incidental permit under the proposed limited access system.

Permit Process

NMFS would identify and notify all permit holders of their eligibility status for the directed or incidental shark fishery, after analysis based on the established eligibility criteria.

Upon receipt of this initial notification, eligible permit holders may submit an application for a directed or incidental fishery permit. If a permit holder is informed that he or she does not qualify for a permit, but he or she believes that there is credible evidence to the contrary, the permit holder may apply for a permit and provide the appropriate documentation. NMFS would then evaluate all applications and any accompanying documentation, and notify the applicant of its decision either to accept or deny the permit application.

If the permit application is denied, the applicant may appeal within 90 days of receipt of the notice of denial. Provisional directed or incidental fishery permits, as appropriate, would be issued, pending the outcome of an appeal, until the final decision has been rendered. All appeal decision letters would be mailed via certified mail. If the appeal is denied, provisional permits would become invalid 5 days after the receipt of the notice of denial. If the appeal is approved, provisional permits would become invalid upon receipt of the appropriate permit.

Only owners or operators of permitted vessels that were permitted at any time from July 1, 1994, through December 31, 1995, would be considered for appeal. All appeals would need to be made in writing. To appeal, the applicant would complete an appeal cover sheet with the name, affiliation (if any), address, and telephone number of the applicant. Additional pages and documentation could be attached, as necessary.

The sole ground for appeal would be that NMFS used incorrect or incomplete data in the eligibility analysis. No hardship cases would be heard. Valid documentation of landings covering the eligibility period would be required for consideration of an appeal. Documentation that would be considered in support of an appeal from fishers who believe they qualify for a directed or incidental fishery permit would be restricted to official NMFS logbook records that have been submitted to NMFS prior to August 30, 1995 (60 days after the cutoff date for eligible landings); official, verifiable sales slips or receipts from registered dealers; and state landings records. Dealer sales slips or receipts would have

to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

While photocopies would be acceptable for initial submission, NMFS might request originals at a later date, which would be returned to the applicant via certified mail. Any submitted materials of questionable authenticity would be referred for investigation to NMFS' Office of Enforcement.

NMFS would designate appeals officers, who would be NOAA employees. The appeals officers would individually review cases but would confer regularly to ensure consistency.

The appeals officers would review appeals for no more than 30 days before making a recommendation to the Director of the Office of Sustainable Fisheries (Director). The Director would render the final decision for the Department of Commerce. All denial letters would be sent by certified mail with return receipt so that NMFS would know when letters were received by permit holders.

Restrictions on Transfer of Permits

NMFS recognizes that vessels may sink or deteriorate beyond repair, and vessel owners may have valid reasons for wishing to exit the fishery. NMFS proposes to create a system in which directed commercial permits would be transferable with the sale of the permitted vessel, or to a vessel of similar harvesting capacity, or a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers would be subject to upgrading restrictions (defined in next section). Incidental permits would not be transferable. NMFS recognizes that the same factors present in the directed fishery (e.g., vessel sinking or deterioration, disability, retirement) would also be present in the incidental fishery and that non-transferability of incidental permits would eventually result in the elimination of the incidental fishery through attrition. However, NMFS believes that allowing transferability of incidental permits could result in substantial increases in fishing effort levels. Prohibiting transferability of incidental permits would slow the growth of fishing effort in the limited access fishery.

In years after 1997, the eligibility criteria to which initial limited access permit holders are subject would not apply. In other words, transferees/

buyers of limited access vessel permits would not be required to meet the initial limited access eligibility criteria, (i.e., having held a shark permit at any time from July 1, 1994, through December 31, 1995; having met the landings thresholds and the earned income requirement; and owning a vessel at the time of publication of the final rule).

Restrictions on Vessel Upgrading

NMFS proposes to require that any vessel to which a permit is transferred be defined as the "new" vessel and be required to have the same or less gross registered tonnage and registered length as the originally permitted vessel. This restriction would apply to "replacement vessels," or those vessels acquired by the original permittee to replace originally permitted vessels, and to "new vessels," or those vessels not originally permitted but to which a permit has been transferred after the original permittee has sold the permit. This restriction would also apply to the refurbishment of existing permitted vessels.

Ownership Limits

NMFS proposes to restrict the number of permitted vessels that any one person or entity could own or control to no more than 5 percent of the permitted vessels in the directed fishery. This would prevent significant consolidation and maintain the historically predominant individual owner/operator character of the shark fishery.

Incidental Harvest Limits

Without limits on the harvest of bycatch, the potential would exist for the incidental fishery to target and harvest significant numbers of sharks. This would defeat the purpose of the two-tiered commercial permit system. For these reasons, NMFS proposes to establish a harvest limit for the incidental fishery at a maximum of four sharks (all species combined) per vessel per day. Vessel logbooks would be examined to determine the dates of trip origin and termination (number of days) to ascertain the authorized harvest limit for each trip, with the number of days of the trip multiplied by 4 as the maximum number of sharks of all species authorized per trip.

NMFS believes that establishing a limit of four shark per vessel per day for the commercial incidental fishery would ensure that fishing mortality on the overfished large coastal stock does not increase, while still providing the opportunity for incidental fishers to land some bycatch. The rationale for combining all species groups is that a single catch limit would minimize

fishing mortality on the overfished large coastal sharks, prevent increases in fishing mortality on the fully fished pelagic and small coastal sharks, reduce the incentive to target sharks while fishing for other species, and greatly facilitate enforcement. A limit of four sharks per vessel per day limit for the incidental limit would be restrictive for the pelagic longline fisheries, which often catch substantial numbers of pelagic sharks as bycatch. However, at this time, most pelagic sharks are released except for makos and threshers, which are harvested for their valuable fins, and porbeagles, for which there is a small directed fishery. Current estimates of effective fishing mortality on pelagic sharks indicate that significant increases in fishing mortality would likely result in overfishing. The proposed incidental limit, in conjunction with the limited number of permits that would be issued for the incidental category under the proposed limited access system (approximately 279 permits), would allow some sharks caught as bycatch to be landed, while an increase in the current level of fishing mortality would be prevented.

Fees

The Regional Director may charge a fee to recover the administrative expenses of permit issuance and appeals. The amount of the fee would be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee would not exceed such costs and would be specified with each application form. The appropriate fee would be required to accompany each application. Failure to pay the fee would preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded would invalidate any permit.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator has preliminarily determined that the proposed regulations are necessary for management of the Atlantic shark fishery. NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. NMFS reinitiated consultation on the Atlantic shark fishery under section 7 of the Endangered Species Act on September 25, 1996. This consultation will consider new information concerning

the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This rule would reduce the number of permits in the Atlantic shark commercial fishery and freeze the harvesting capacity of the fleet at current levels, thereby preventing further overcapitalization and derby fishing conditions and would likely reduce interaction rates.

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would establish a two-tiered limited access permit system for the Atlantic shark fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. The Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan.

The purpose of this proposed rule is to rationalize current harvesting capacity with total allowable catch and substantially reduce latent effort without significantly altering the status quo in the Atlantic shark fishery. Practically all current participants of the shark fishery readily fall within the definition of small business. The proposed rule will affect all current permit holders in the Atlantic shark fishery. However, few if any shark fishers that are substantially dependent on the fishery would be excluded under the proposed limited access rule.

Speculative permit holders, by definition, have not participated in the commercial shark fishery at all or have not been substantially dependent on the fishery. The incidental bycatch limits continue to provide for speculative commercial fishers to land some sharks; accordingly, annual gross revenues should not decrease substantially.

Therefore, redefining commercial shark permits as directed and incidental will not significantly alter the status quo of the Atlantic shark fishery in terms of fishers' annual gross revenues. Since the proposed rule will not significantly impact presently active shark fishers, the "significant economic impact" criterion will not be met. Therefore, the substantive changes proposed are minimal, primarily affecting the applicability of permitting requirements.

Any of the proposed limited entry measures have implications on the gross revenues of small entities. In essence, those that will be excluded from any form of limited entry system will experience

reduction in their gross revenues at least in the short run. If qualification for any form of limited entry is similar to the one adopted for the species endorsement and bycatch while limited is allowed, those excluded would probably not experience more than a 5 percent reduction in their gross revenues.

The substantive changes proposed primarily affecting the applicability of permitting requirements. The need for these changes is explained in the preamble to the proposed rule.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This proposed rule does not change any currently approved vessel permitting or reporting requirements under OMB Control Numbers 0648-0205, which is estimated and approved at 20 minutes per permit application, and 0648-0016, which is estimated and approved at 15 minutes per logbook report. However, the appeals procedure does constitute a new collection-of-information requirement, which has been submitted to OMB for approval. An appeal of a permit denial is estimated to take 1.5 hours, including the time to gather records, make copies, and mail documents to NMFS. Comments regarding: (1) the accuracy of this burden estimate (including hours and cost); (2) whether the proposed collection of information is necessary for the proper performance of NMFS' functions, including whether the sought information has practical utility; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information; and (5) any other aspects of information collection should be sent to OMB and NMFS (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 1996.

Nancy Foster,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 678 is proposed to be amended as follows:

PART 678—ATLANTIC SHARKS

1. The authority citation for part 678 continues to read as follows:

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

2. In § 678.2, a definition for "Director" is added, in alphabetical order, to read as follows:

§ 678.2 Definitions.

* * * * *

Director means the Director, Office of Sustainable Fisheries F/SF, NMFS, or a designee.

* * * * *

3. In § 678.4, paragraphs (a) through (c) and (e) through (k) are revised to read as follows:

§ 678.4 Permits and fees.

(a) *Vessel permits.* Any owner or operator of a vessel of the United States that fishes for, possesses, or lands Atlantic sharks from the management unit, except vessels that fish for Atlantic sharks exclusively in state waters, and recreational fishing vessels, must obtain and carry on board a valid Federal shark permit issued under this paragraph.

(1) *Limited access eligibility in 1997.* NMFS will issue two types of Atlantic shark vessel permits: Directed and incidental. To be eligible to obtain a shark permit for 1997, a vessel owner or operator must have held a valid Federal commercial shark permit at any time from July 1, 1994, through December 31, 1995, must meet the earned income qualification specified in paragraph (b)(1)(vi) of this section, and must own or operate a vessel with a valid shark permit on the date of publication of the final rule.

(i)(A) Directed permits will be issued only to eligible permit holders that have documented landings of at least 250 sharks from January 1, 1991, through February 21, 1994, and 125 sharks from February 22, 1994, through June 30, 1995.

(B) Incidental permits will be issued only to eligible permit holders that have documented landings of three sharks from January 1, 1991, through February 21, 1994, and two sharks from February 22, 1994, through June 30, 1995.

(ii) If the vessel owner does not meet the limited access criteria specified in paragraph (a)(1) of this section and the earned income qualification specified in paragraph (b)(1)(vi) of this section and the operator does meet those qualifications, the operator may apply for a shark permit.

(iii) A shark permit for 1997 will not be issued unless an application for such permit is received by NMFS on or before December 31, 1997.

(2) *Eligibility in 1998 and thereafter.* To be eligible for a shark permit in years after 1997, a vessel owner or operator must have been issued a shark permit for the preceding year or the vessel must be replacing a vessel that has been retired from the Atlantic commercial shark fishery and had been issued a shark permit for the preceding year, and the vessel and owner must meet the criteria set forth in paragraphs (a)(4) through (a)(6) of this section. If more than one vessel owner claims eligibility to apply for a shark permit based on one vessel's fishing and permit history after 1997, the Regional Administrator shall determine who qualifies for the limited access Atlantic shark vessel permit according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to be retained by the original permit holder whenever the vessel 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 transferring/selling the vessel's fishing and permit history.

(4) *Permit transfer.* Directed permits are transferable to a new vessel and/or owner or to a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers are subject to the requirements specified in paragraph (a)(5) of this section. Incidental permits are not transferable or assignable; incidental permits are valid only for the vessel and owner or operator of original issuance.

(5) *Vessel replacement/upgrading.* Transfer of directed shark permits is authorized only for new or replacement vessels of the same or lesser gross registered tonnage and registered length as the originally permitted vessel.

(6) *Ownership limits.* One person or entity may own or control no more than 5 percent of the vessels in the directed shark fishery.

(7) Notification of eligibility for 1997.

(i) NMFS will attempt to notify all current commercial shark permit holders of their eligibility for a directed or incidental shark permit, based on the eligibility criteria set forth in paragraph (a)(1) of this section. Upon receipt of this determination, eligible permit holders may submit an application for the appropriate permit.

(ii) If a vessel owner or operator has been notified that the vessel is not eligible for a directed shark permit or is only eligible for an incidental shark permit, and the vessel owner or operator can provide credible evidence that the

vessel does qualify under the pertinent criteria, the vessel owner or operator may apply for the appropriate permit by submitting the documentation required under paragraph (9)(ii) of this section. If, based on the documentation supplied with the application, NMFS determines that the vessel meets the eligibility criteria, the appropriate permit will be issued.

(8) *Application denial.* If, based on the documentation supplied with the application, NMFS determines that the vessel does not meet the eligibility criteria specified in paragraphs (a)(1) and (a)(2) of this section or the conditions specified in paragraph (e) of this section, the permit will be denied. Letters of denial will be sent via certified mail.

(9) *Appeals.* (i) Any applicant denied a limited access permit for Atlantic shark vessels may appeal the denial to NMFS within 90 days of the notice of denial. The sole ground for appeal is that NMFS erred in its determination of eligibility on the basis of incorrect or incomplete data. Valid documentation of landings covering the eligibility period as specified in paragraph (a)(9)(ii) of this section must be provided by the applicant for NMFS to consider an appeal. Photocopies will be acceptable for initial submission. NMFS may request originals at a later date, which will be returned to the applicant via certified mail. Any such appeal must be in writing. Documentation that is of questionable authenticity will be referred for investigation to NMFS' Office of Enforcement.

(ii) *Valid documentation.* The only documentation that will be considered in support of an application or appeal are official NMFS logbook records that were submitted to NMFS prior to August 30, 1995, state landings records, and official, verifiable sales slips or receipts from registered dealers. Dealer sales slips and receipts must definitively show the species landed and vessel's name or other traceable information for the harvesting vessel and must contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

(iii) *Status during appeal.* The Regional Director shall issue a provisional permit for the category of appeal for, which shall be valid for the pendency of the appeal to a vessel and owner for which an appeal has been initiated. The provisional permit must be carried on board the vessel while participating in the Atlantic shark fishery and is not transferable.

(iv) *Appeals officers.* NMFS will appoint appeals officers, who will review the written materials and submit

findings and a recommendation to the Regional Director within 30 days of receipt of a complete appeal.

(v) *Final decision on appeals.* 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.

(vi) *Notification of final decision on appeals.* The Regional Director shall notify the appellant of the final decision on the appeal by letter sent via certified mail. If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial. If the appeal is granted, the provisional permit will become invalid upon receipt of the appropriate permit.

(10) *Adjustments to eligibility.* In years after 1997, NMFS may adjust the eligibility criteria for issuance of a shark permit. In making the adjustment, NMFS 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 § 678.27.

(11) *Condition.* A vessel owner who applies for a shark permit under this section must agree, as a condition of the permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, those more restrictive regulations may be applied by that state to fishing, catch, and gear in its waters.

(b) *Application for a shark permit.* (1) In the year 1997, an initial application for a shark permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. An applicant must provide the following:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name, official number, registered gross tonnage, and registered length.

(iii) Name, mailing address including ZIP code, telephone number, and social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, the employer identification number, if one has been assigned by the Internal Revenue Service (IRS), and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(1)(vi) of this section and the operator does meet that qualification, the name, mailing address including ZIP code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as specified on the application form.

(vi) A sworn statement by the applicant (if the applicant is a corporation or partnership, by an officer, shareholder, general partner, or if the applicant is an operator, by the operator) certifying that, during 1 of the 3 calendar years preceding the application:

(A) More than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or from charter or headboat operations;

(B) His or her gross sales of fish were more than \$20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than \$20,000.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(1)(x) of this section.

(viii) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(11) of this section.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(x) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(1)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(2) In years after 1997, a shark permit holder may apply for a shark permit renewal, provided that the initial information under which the permit holder qualified for a shark permit has not changed as specified in paragraph (k) of this section. Shark permits must be renewed annually and renewal applications must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Only a holder of a valid shark permit is eligible for a renewal of that permit.

(3) In years after 1997, an application for permit transfer of a directed shark permit to a new vessel and/or owner will be authorized, subject to transfer and upgrading restrictions specified in paragraphs (a)(4) and (a)(5) of this section, respectively. Incidental shark permits are not transferable. All other requirements and restrictions specified in this part apply to transferred limited access permits and permit holders.

(c) *Dealer permits.* A dealer who receives sharks from the management unit must have a valid dealer permit issued under this part. An application for an annual dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(1) A permit applicant must provide the following:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business; address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(2) *Transfer.* A dealer permit issued under paragraph (c)(1) of this section may be transferred upon sale of the dealer's business. However, such transferred permit shall expire 30 days after sale of the dealer's business. A person purchasing a permitted dealership who desires to conduct

activities for which a new permit is required after that 30-day period must apply promptly for a permit in accordance with paragraph (c) of this section.

* * * * *

(e) *Issuance.*—(1) Limited access shark permits. Except as provided in subpart D of 15 CFR part 904 and under paragraphs (a)(8) and (a)(9) of this section, the Regional Director shall issue a Federal shark permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 678.5;

(ii) The application was not received by NMFS by the deadlines set forth in paragraph (a)(1)(v) of this section;

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

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

(2) *Dealer permits.* The Regional Director will issue a dealer permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 678.5(a) or § 678.5(b).

(3) *Incomplete applications.* Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is retired from the shark fishery or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Display.* A vessel permit issued pursuant to paragraphs (a)(9)(iii) or (b) of this section must be carried on board the vessel, and such vessel must be identified as required by § 678.6. A dealer permit issued pursuant to paragraph (c) of this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for inspection upon the request of an authorized officer.

(h) *Sanctions and denials.* A permit issued pursuant to this section may be

revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(i) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(j) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

(k) *Change in application information.* The owner or operator of a vessel with a shark permit or a dealer with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraphs (a), (b), or (c) of this section. The permit is void if any change in the information is not reported within 30 days.

* * * * *

4. In § 678.7, paragraphs (b), (k) through (m), (p), (q), (x), and (y) are revised to read as follows:

§ 678.7 Prohibitions.

* * * * *

(b) Fail to display a permit, as specified in § 678.4(g).

* * * * *

(k) Remove the fins from a shark and discard the remainder, as specified in § 678.22(b)(1).

(l) Possess shark fins, carcasses, or parts, aboard or offload shark fins from a fishing vessel, except as specified in § 678.22, or possess shark carcasses or parts aboard, or offload shark fins, carcasses, or parts, from a vessel, except as specified in § 678.22(d).

(m) Fail to release a shark in the manner specified in § 678.22(c).

* * * * *

(p) Land or possess on any trip, shark in excess of the vessel trip limit, as specified in § 678.22(d).

(q) Transfer a shark at sea, as specified in §§ 678.22(d)(3) and 678.23(e).

* * * * *

(x) Exceed the vessel trip limits, as specified in § 678.22(d).

(y) Purchase, trade, or barter, or attempt to purchase, trade, or barter, a shark from the management unit without an annual dealer permit, as specified in § 678.4(c).

* * * * *

5. Section 678.22 is revised to read as follows:

§ 678.22 Harvest Limitations.

(a) *Limited access permit restrictions.*

(1) Only holders of valid directed shark

permits issued pursuant to § 678.4 may target and harvest sharks under the specifications outlined in §§ 678.20, 678.21, and 678.24 through 678.28.

(2) Only holders of valid incidental shark permits issued pursuant to § 678.4 may retain a maximum of four sharks (all species combined) per vessel per day.

(b) *Finning.* (1) The practice of “finning,” that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ or aboard a vessel that has been issued a permit pursuant to § 678.4.

(2) Shark fins that are possessed onboard or offloaded from a fishing vessel must be in proper proportion to the weight of carcasses. That is, the weight of fins may not exceed 5 percent of the weight of the carcasses. All fins must be weighed in conjunction with the weighing of the carcasses at the vessel’s first point of landing and such weights of the fins landed must be recorded on the weighout slips

submitted by the vessel owner or operator under § 678.5(a).

(3) Shark fins may not be possessed onboard a fishing vessel after the vessel’s first point of landing.

(c) *Release.* A shark that is harvested in the EEZ or harvested by a vessel that has been issued a permit pursuant to § 678.4 that is not retained—

(1) Must be released in a manner that will ensure maximum probability of survival.

(2) If caught by hook and line, must be released by cutting the line near the hook without removing the fish from the water.

(d) *Vessel trip limits*—(1) *Directed permits.* The owner or operator of a vessel that has been issued a directed shark permit pursuant to § 678.4 may not possess on any trip, or land from any trip, large coastal species in excess of 4,000 lb (1,814 kg), dressed weight.

(2) *Incidental permits.* The owner or operator of a vessel that has been issued an incidental shark permit pursuant to § 678.4 may not possess on any trip, or land from any trip, in excess of four

sharks per day of all shark species combined. Vessel logbooks will be the sole criterion used to determine dates of trip origin and termination for each trip.

(3) *Transfer at sea.* A shark from any of the three management units may not be transferred at sea from a vessel issued an Atlantic shark permit issued under § 678.4 to any other vessel.

6. In § 678.26, paragraph (c) is revised to read as follows:

§ 678.26 Restrictions on sale upon landing.

* * * * *

(c) Fins from a shark harvested in the EEZ, or by the owner or operator of a vessel that has been issued a permit under § 678.4, that are disproportionate to the weight of carcasses landed (see § 678.22(b)(2)) may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

* * * * *