

## Fishery Conservation and Management

## § 600.747

required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[63 FR 27217, May 18, 1998, as amended at 67 FR 64312, Oct. 18, 2002]

### **§ 600.747 Guidelines and procedures for determining new fisheries and gear.**

(a) *General.* Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from those listed in § 600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines.* The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in § 600.725(v) and to the existing gear definitions in § 600.10.

(2) If the gear in question falls within the bounds of a definition in § 600.10 for an allowable gear type within that fishery, as listed under § 600.725(v), then the gear is not considered different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or

Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in § 600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in § 600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in § 600.725(v), or if the gear is different from that defined in § 600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After July 26, 1999, no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in § 600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification.*

(i) *Species other than Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(1) Recommend to the RA that the list be amended;

(2) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(3) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether to publish a proposed rule. If

information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the FEDERAL REGISTER with a request for public comment.

(ii) *Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify the applicant of the negative determination with the reasons therefor.

(4) *Final determination and publication of a final rule.* Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the FEDERAL REGISTER and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency

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or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

[64 FR 4043, Jan. 27, 1999]

### Subpart I—Fishery Negotiation Panels

SOURCE: 62 FR 23669, May 1, 1997, unless otherwise noted.

#### § 600.750 Definitions.

*Consensus* means unanimous concurrence among the members on a Fishery Negotiation Panel established under this rule, unless such Panel:

(1) Agrees to define such term to mean a general but not unanimous concurrence; or

(2) agrees upon another specified definition.

*Fishery negotiation panel* (FNP) means an advisory committee established by one or more Councils or the Secretary in accordance with these regulations to assist in the development of fishery conservation and management measures.

*Interest* means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

*Report* means a document submitted by an FNP in accordance with the Magnuson-Stevens Act.

[62 FR 23669, May 1, 1997, as amended at 63 FR 7075, Feb. 12, 1998]

#### § 600.751 Determination of need for a fishery negotiation panel.

A Council or NMFS may establish an FNP to assist in the development of specific fishery conservation and management measures. In determining whether to establish an FNP, NMFS or the Council, as appropriate, shall consider whether:

(a) There is a need for specific fishery conservation and management measures.

(b) There are a limited number of identifiable interests that will be sig-

nificantly affected by the conservation and management measure.

(c) There is a reasonable likelihood that an FNP can be convened with a balanced representation of persons who:

(1) Can adequately represent the interests identified under paragraph (b) of this section.

(2) Are willing to negotiate in good faith to reach a consensus on a report regarding the issues presented.

(d) There is a reasonable likelihood that an FNP will reach

a consensus on a report regarding the issues presented within 1 year from date of establishment of the FNP.

(e) The use of an FNP will not unreasonably delay Council or NMFS fishery management plan development or rule-making procedures.

(f) The costs of establishment and operation of an FNP are reasonable when compared to fishery management plan development or rulemaking procedures that do not use FNP procedures.

(g) The Council or NMFS has adequate resources and is willing to commit such resources, including technical assistance, to an FNP.

(h) The use of an FNP is in the public interest.

#### § 600.752 Use of conveners and facilitators.

(a) *Purposes of conveners.* A Council or NMFS may use the services of a trained convenueer to assist the Council or NMFS in: (1) Conducting discussions to identify the issues of concern, and to ascertain whether the establishment of an FNP regarding such matter is feasible and appropriate.

(2) Identifying persons who will be significantly affected by the issues presented in paragraph (a)(1) of this section.

(b) *Duties of conveners.* The convenueer shall report findings under paragraph (a)(2) of this section and shall make recommendations to the Council or NMFS. Upon request of the Council or NMFS, the convenueer shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the potential conservation and management measures relevant to the issues to be negotiated. The report and