

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 110118038-1314-02]

RIN 0648-BA72

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 22**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing measures specified in Framework Adjustment 22 (Framework 22) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed and adopted by the New England Fishery Management Council (Council). The specifications in Framework 22 are based on, and are being implemented in conjunction with, the management measures in Amendment 15 to the FMP (Amendment 15) that establish the process for setting annual catch limits (ACLs) and accountability measures (AMs) to bring the FMP into compliance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The purpose of Framework 22 is to set the following scallop management measures for the 2011 through 2013 fishing years (FYs): The overfishing limit (OFL), acceptable biological catches (ABC), ACLs, and annual catch targets (ACTs) for both the limited access (LA) and limited access general category (LAGC) fleets; open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (YTF) total allowable catch (TAC) is caught; LAGC-specific allocations, including access area trip allocations for vessels with individual fishing quotas (IFQs), the Northern Gulf of Maine (NGOM) TAC, and the incidental target TAC; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); and the elimination of the default Georges Bank (GB) access area rotation schedule. Consistent with proposed measures in Amendment 15, Framework 22 sets FY 2013 management measures as precautionary default measures, to be applied if a new biennial framework

adjustment is not implemented by the start of FY 2013.

**DATES:** Effective August 1, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Framework 22 that describes the action and other considered alternatives and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 22, the EA, and the Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, 978-281-9244; fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:****Background**

Framework 22 was developed and adopted by the Council, partially in conjunction with and based on Amendment 15 measures, in order to comply with requirements of the MSA and to meet the FMP's objectives to prevent overfishing and improve yield-per-recruit from the fishery. Consequently, the authority to implement Framework 22 is in part based on NMFS' approval of Amendment 15, which is concurrently under rulemaking. Framework 22 specifies measures for FYs 2011 through 2013. FY 2013 measures will go into place as a default, should the biennial framework to specify FY 2013-2014 measures be delayed beyond the start of FY 2013.

The Council adopted Framework 22 on November 17, 2010, and submitted it to NMFS on March 22, 2011. The Council reviewed the Framework 22 proposed rule regulations as drafted by NMFS, which included regulations proposed by NMFS under the authority of section 305(d) of the MSA, and on March 18, 2011, deemed them to be necessary and consistent with section 303(c) of the MSA. The proposed rule for Framework 22 published in the **Federal Register** on April 29, 2011 (76 FR 23940), with a 30-day public comment period that ended May 31, 2011. Three comments were received on the proposed measures. On May 4, 2011, during the public comment period of the proposed rule, the Council and the scallop industry requested that emergency action be taken by NMFS to close the Nantucket Lightship (NLS) access area prior to its scheduled opening on June 15, 2011. NMFS agreed with taking this action and the emergency rule published in the **Federal Register** on June 1, 2011 (76 FR

31491). Although Framework 22 closes NLS, because Framework 22 was not approved and implemented by June 15, 2011, the area would have opened under the roll-over FY 2010 measures. This emergency closure prevented potentially high levels of scallop and YTF catch that could have resulted from opening the area prior to the approval and implementation of Framework 22, which could have been detrimental to the long-term management and health of the scallop fishery. This final rule will continue the NLS closure for the remainder of FY 2011 and, as such, the regulatory text of this action will replace regulations put in place by the emergency action.

The final Framework 22 management measures are described below. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

*Specification of Scallop OFL, ABC, ACL, and ACTs for FYs 2011 and 2012 and Default Specifications for FY 2013*

These specifications are set in accordance with measures and criteria in Amendment 15. The OFL is set based on a fishing mortality rate (F) of 0.38, equivalent to the F threshold updated through the most recent scallop stock assessment. The ABC and equivalent total ACL for each FY are based on an F of 0.32, the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended ABCs for the FY 2011 and 2012 scallop fisheries of 60.1 M lb (27,269 mt) and 63.8 M lb (28,961 mt), respectively, after accounting for discards and incidental mortality. The Scallop Plan Development Team (PDT) estimated the FY 2013 ABC of 63.3 M lb (28,700 mt) using the same approach that was reviewed and approved by the SSC to set the ABC for FYs 2011 and 2012. The decision to include third-year default measures occurred after the SSC made ABC recommendations for this action. The SSC will recommend an ABC in conjunction with the next biennial framework adjustment for FY 2013 and FY 2014, as well as a default ABC for FY 2015.

Table 1 outlines the scallop fishery catch limits that are derived from these ABC values. After deducting the incidental target TAC and the research and observer set-asides, the remaining ACL available to the fishery is proportioned out according to Amendment 11 fleet allocations, with 94.5 percent allocated to the LA scallop fleet, 5 percent allocated to the LAGC IFQ fleet, and the remaining 0.5 percent

allocated to LA scallop vessels that also have LAGC IFQ permits. These separate ACLs and their corresponding ACTs are referred to as sub-ACLs and sub-ACTs, respectively, throughout this action. Amendment 15 determined that no buffers to account for management uncertainty are necessary in setting the

LAGC sub-ACLs, meaning that the LAGC sub-ACLs equal the LAGC sub-ACTs. As a result, the LAGC sub-ACL values in Table 1, based on an F of 0.32, represent the amount of catch from which IFQ percent shares will be applied to calculate each vessel's IFQ for a given FY. For the LA fleet,

Amendment 15 set a management uncertainty buffer based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which results in an F of 0.28.

TABLE 1—SCALLOP CATCH LIMITS FOR FYS 2011 THROUGH 2013 FOR BOTH THE LA AND LAGC IFQ FLEETS (MT)

	2011	2012	2013
OFL .....	32,387	34,382	34,081
ABC/ACL .....	27,269	28,961	28,700
Incidental TAC .....	23	23	23
Research Set-Aside (RSA) .....	567	567	567
Observer Set-aside (1 percent of ABC/ACL) .....	273	290	287
LA sub-ACL(94.5 percent of total ACL, after deducting set-asides and incidental catch) .....	24,954	26,537	26,293
LA sub-ACT (adjusted for management uncertainty) .....	21,431	23,546	19,688
LAGC IFQ sub-ACL (5.0 percent of total ACL, after deducting set-asides and incidental catch) .....	1,320	1,404	1,391
LAGC IFQ sub-ACL for vessels with LA scallop permits (0.5 percent of total ACL, after deducting set-asides and incidental catch) .....	132	140	139

These allocations do not account for any adjustments that would be made year-to-year if the AMs specified in Amendment 15 are triggered due to annual landings exceeding the ACL.

Open Area DAS Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (i.e., full-time, part-time, and occasional) for FYS 2011 through 2013 (Table 2). FY 2013 DAS allocations are set at a precautionary level equal to 75 percent of what current biomass projections indicate could be allocated to each LA scallop vessel for the entire FY to avoid over-allocating DAS to the fleet in the event that the framework that would set those allocations, if delayed past the start of FY 2013, estimates that DAS should be less than currently projected.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR FYS 2011 THROUGH 2013

Scallop open area allocations			
Permit category	FY 2011	FY 2012	FY 2013
Full-Time .....	32	34	26

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR FYS 2011 THROUGH 2013—Continued

Scallop open area allocations			
Permit category	FY 2011	FY 2012	FY 2013
Part-Time ....	13	14	11
Occasional ..	3	3	3

Because Framework 22 was not implemented at the March 1 start of FY 2011, and the DAS allocated at the start of FY 2011 are higher than those specified in Framework 22, it is possible that scallop vessels could exceed their Framework 22 DAS allocations during the interim period between March 1, 2011, and the effective date of this final rule. Therefore, Framework 22 specifies that the number of LA open area DAS used in FY 2011 by a vessel (excluding carryover DAS) that exceed the final FY 2011 open area DAS allocation for that vessel will be deducted from the vessel's FY 2012 open area DAS allocation. For example, if a full time vessel fishes 38 DAS between March 1, 2011, and the effective date of this final rule, 6 DAS (i.e., 38 DAS – 32 DAS) will be deducted from that vessel's FY 2012

DAS allocation, resulting in a total of 28 DAS for FY 2012.

Open Area DAS Adjustment if Access Area YTF TAC is Attained

Under the Northeast (NE) Multispecies FMP, 10 percent of the GB YTF TAC (i.e., total GB YTF ACL) is allocated to scallop vessels fishing in the Closed Area I (CAI) and Closed Area II (CAII) Access Areas, combined; and 10 percent of the Southern New England/Mid-Atlantic (SNE/MA) YTF TAC (i.e., total SNE/MA YTF ACL) is allocated to scallop vessels fishing in NLS. Framework Adjustment 45 to the NE Multispecies FMP (76 FR 23042; April 25, 2011) set the total YTF ACLs outlined in Table 3 for FYS 2011 and 2012 (FY 2013 values will be determined in a future framework adjustment to the NE multispecies FMP). Table 3 also includes the TACs available for the scallop access areas (i.e., 10 percent of each total ACL) and, for comparison, the sub-ACLs allocated to the scallop fishery. The scallop fishery's YTF sub-ACLs and YTF access area TACs are not additive. For example, YTF catch from CAII is applied to both the GB sub-ACL and the YTF TAC available for the two GB access area.

TABLE 3—TOTAL ACLS, SCALLOP SUB-ACLs, AND ACCESS AREA TACs FOR YTF IN FYS 2011 AND 2012

FY	YTF stock	Total ACL (mt)	Scallop access area YTF TAC (mt)	Scallop sub-ACL (mt)
FY 2011 .....	GB .....	1,416	141.6	82
	SNE .....	641	64.1	200.8
FY 2012 .....	GB .....	936	93.6	127

TABLE 3—TOTAL ACLS, SCALLOP SUB-ACLS, AND ACCESS AREA TACs FOR YTF IN FYS 2011 AND 2012—Continued

FY	YTF stock	Total ACL (mt)	Scallop access area YTF TAC (mt)	Scallop sub-ACL (mt)
	SNE .....	1,426	142.6	307.5

Under the NE multispecies regulations, if the GB or SNE/MA YTF TAC is caught, CAI and CAII, and/or NLS will close to further scallop fishing for the remainder of the FY. If a vessel has unutilized trip(s) after an access area is closed due to reaching the YTF TAC, it will be allocated additional open area DAS at a reduced rate. Unused access area trip(s) will be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) will be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. The conversion used to allocate additional DAS from a YTF access area closure is based on Framework 22's FYs 2011–2013 LA scallop possession limits for access area trips of 18,000 lb (8,165 kg) for full-time vessels, 14,400 lb (6,532 kg) for part-time vessels, and 6,000 lb (2,723 kg) for occasional vessels, and are as follows: For a given FY, the pounds remaining from an access area trip(s) (i.e., from a fully unused trip(s) and/or

unused compensation trip(s)) is first multiplied by the average meat count (i.e., number of shucked scallop abductor muscles per lb) from that area and then subsequently divided by both the open area average meat count and by the open area landings-per-unit-effort (LPUE), resulting in a DAS allocation comparable to the unused access area pounds. For example, in FY 2011, based on a catch limit of 18,000 lb (8,165 kg), and average meat count for scallops in CAI estimated to be 10.6 meats/lb, 190,800 scallops would be removed per full-time trip (18,000 lb (8,165 kg) × 10.6 meats/lb = 190,800 meats). The meat count and LPUE for open areas in FY 2011 are estimated to be 18.4 meats/lb and 2,441 lb/DAS, respectively. The estimated number of open area DAS a full-time vessel would use to catch the same number of scallops as it would in CAI with an 18,000-lb (8,165-kg) possession limit is estimated to be 4.3 DAS (190,800 scallops/(18.4 meats/lb × 2,441 lb/DAS = 4.3 DAS). Therefore, if a full-time vessel had an unused CAI

trip at the time of a CAI YTF TAC closure, the vessel will be allocated 4.3 DAS in open areas. Table 4 outlines the DAS/trip conversion for unused full-time, part-time, and occasional vessels access area trips. This trip/DAS conversion applies to all full-time vessels, but only to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). If a vessel has an unused compensation trip in an access area that closes due to YTF, the same calculation outlined above applies, resulting in a proportional DAS increase to that of a fully unused trip allocation. For example, in FY 2011, if a full-time vessel had an unused 9,000-lb (4,082-kg) CAI compensation trip (i.e., half of the full-time vessel's 18,000-lb (8,165-kg) possession limit) at the time of a CAI YTF TAC closure, the vessel will be allocated 2.15 DAS (i.e., half of the 4.3 DAS that is allocated for a full unused CAI trip).

TABLE 4—SCALLOP ACCESS AREA TRIP/DAS CONVERSIONS IF CAI, CAII, AND/OR NLS CLOSE DUE TO FULL HARVEST OF GB AND/OR SNE/MA YTF TAC

Access area trip conversion to open area DAS				
Permit category	FY	CAI	CAII	NLS
Full-Time .....	2011 .....	4.3	5.7	.....
	2012 .....	4.4	5.4	4.3
	2013 .....	.....	5.4	4.9
Part-Time .....	2011 .....	3.4	4.5	.....
	2012 .....	3.6	4.3	3.4
	2013 .....	.....	4.3	3.9
Occasional .....	2011 .....	1.4	1.9	.....
	2012 .....	1.5	1.8	1.4
	2013 .....	.....	1.8	1.6

*LA Trip Allocations, the Random Allocation Process, and Possession Limits for Scallop Access Areas*

This action specifies a new access area allocation scheme for full-time vessels fishing in scallop access areas. In terms of allocations to the fleet, full-time LA scallop vessels will receive four access area trips in each FY from 2011 through 2013. In order to avoid allocating trips into access areas with scallop biomass levels not large enough to support a full trip by all 313 LA full-time vessels in a single FY, Framework 22 allocates “split-fleet” trips into

certain access areas. In order to make this process as fair as possible to scallop vessel owners, prior to the start of each FY, NMFS will randomly allocate half of the full-time vessels a full trip into a specific area(s), and half of the full-time vessels a full trip into a different area(s) through the process outlined in Framework 22. Ultimately, all vessels receive the same number of total access area trips, although the specific areas to which they have access may differ (Table 4). This allocation scheme is a “random allocation process” rather than a lottery. The process and rationale for

randomly allocating access area trips to full-time vessels are more fully described in detail in the preamble of the proposed rule and in Section 2.4.2 of the Council's Framework 22 document and is not repeated here.

In order to facilitate trading trips between vessels, the FY 2011 allocations for full-time vessels have already been identified, and can be found in Section 2.4.2 of the Framework 22 document (See ADDRESSES), as well as NMFS' Web site. NMFS will update these preliminary allocations, subject to permit renewal requirements, with any

changes in vessel ownership and/or vessel replacements. An updated list of FY 2011 vessel assignments will be posted on NMFS' Web site and mailed to LA permit holders prior to the effective date of this final rule. The split-fleet trip assignments will also be made publically available through NMFS' Web site and in permit holder letters prior to the start of FYs 2012 and 2013. The decision to use a random allocation process to allocate access area trips to full-time vessels will be re-evaluated in a future framework adjustment.

In FY 2011, all full-time scallop vessels are allocated one trip in the Delmarva Access Area (Delmarva), one trip into the Hudson Canyon Access Area (HC), and one trip into CAI (Table 5). In addition, 157 full-time vessels are allocated one trip into CAII, and the other 156 full-time vessels are allocated an additional trip into CAI, for a total of four access area trips per full-time vessel. A part-time scallop vessel is allocated two trips, which could be taken in one of the following combinations: Two trips in CAI; one trip in the CAI and one trip in CAII; one trip in CAI and one trip in HC; one trip in CAI and one trip in Delmarva; one trip in CAII and one trip in HC; one trip in CAII and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel is allocated one trip, which could be taken in any one open access area.

Because these trip allocations are being implemented after March 1, 2011, and the current regulations that rolled over into FY 2011 are inconsistent with the proposed specifications, it is possible that during the interim between the start of FY 2011 and the implementation of this rule, a scallop vessel could take a trip in an area not open under these final measures. For example, under the current roll-over provisions, at the start of FY 2011, the Elephant Trunk Access Area (ETAA) is an access area, and full-time vessels have received the same allocation as they received in FY 2010 (*i.e.*, two ETAA trips, one Delmarva trip, and one NLS trip). However, Framework 22 changes the ETAA into an open area to be fished under DAS allocations and continues the NLS emergency closure for the duration of FY 2011. Framework 22 has accounted for the ETAA changing from an access area to an open area by including the calculated biomass in this and other areas in the overall open area DAS allocations for FY 2011.

If, during FY 2011, a vessel fishes on an ETAA trip allocated during the interim period between the start of FY

2011 and the implementation of this rule, any pounds landed from a declared ETAA trip shall be converted to the equivalent DAS and deducted from that vessel's open area DAS allocations in FY 2012. The pounds a vessel lands from the ETAA shall first be multiplied by the estimated ETAA average meat count (18.4 meats/lb) and then divided by the product of the estimated open area average meat count (also 18.4 meats/lb) multiplied by the estimated open area LPUE for FY 2011 (2,441 lb/DAS). For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit on an ETAA trip in FY 2011, that vessel shall incur a DAS deduction of 7.4 DAS in FY 2012 ( $(18,000 \text{ lb} \times 18.4 \text{ meats/lb}) / (18.4 \text{ meats/lb} \times 2,441 \text{ lb/DAS})$ ), to account for those landings, resulting in a total FY 2012 DAS allocation of 26.8 DAS (*i.e.*, 34 DAS minus 7.4 DAS). Part-time and occasional vessels receive deductions of 5.9 DAS and 2.5 DAS, respectively, for landing their full trip possession limits from the ETAA in FY 2011. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared ETAA trip in FY 2011, that vessel's FY 2012 DAS allocation shall be reduced by 3.7 DAS (*i.e.*, half of the DAS that will be deducted for a full trip).

Framework 22 includes a provision that this DAS deduction does not apply to vessels that fished compensation trips in the ETAA from trips broken during the last 60 days of FY 2010. The regulations allow for these compensation trips to be taken within the first 60 days of the subsequent FY if the access area from where the trip was broken remains open. Because the ETAA was still considered an access area under the roll-over regulations at the start of FY 2011, any FY 2010 compensation trips started prior to April 29, 2011, will not be counted against FY 2011 DAS.

Due to the emergency action to close NLS, vessels did not have the opportunity to fish in NLS. This final rule continues the NLS closure for the duration of FY 2011. Because of the emergency rule, the pay-back measure included in the proposed rule for Framework 22 to account for scallops that could be landed from vessels that declare NLS trips in FY 2011 is no longer necessary.

Because Delmarva was the only access area that remains open under the measures in place at the start of FY 2011 and specified in this final rule implementing Framework 22, the

preamble to the proposed rule discussed the potential complications for vessels that exchanged a Delmarva trip for a trip in the ETAA prior to the implementation of Framework 22. In summary, if a vessel owner gave up its Delmarva trip through an exchange with another vessel owner, and gained an additional ETAA as a result, its three ETAA trips (*i.e.*, the two ETAA trips allocated at the start of FY 2011 and its ETAA trip gained through the trip exchange) would disappear after Framework 22 is implemented, assuming the vessel did not declare into and land scallops from the ETAA. With the loss of its two ETAA trips, one NLS trip, and one traded Delmarva trip, the vessel would end up with a total FY 2011 access area allocation of three trips (*e.g.*, one in HC, and either two in CAI or one in CAI and one in CAII). Conversely, the vessel that gained the additional Delmarva trip through the exchange would ultimately have a total FY 2011 access area trip allocation of five trips (*e.g.*, two in Delmarva, one in HC, and either two in CAI or one in CAI and one in CAII). To avoid potential inequitable consequences of trip exchanges due to the late implementation of Framework 22 to the extent practicable, this final rule specifies that if a vessel acquired an additional unused ETAA trip through a trip exchange, it will be credited for that trip with additional DAS, equivalent to the trip's possession limit, as soon as possible after Framework 22's implementation. For example, a full-time vessel that had exchanged for an ETAA trip will receive a DAS credit of 7.4 DAS if that vessel did not declare into and fish that ETAA trip. That vessel will then have a total FY 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). Similarly, part-time vessels will receive a credit of 5.9 DAS, if they initially received an additional ETAA trip through a trip exchange that is later removed upon implementation of Framework 22. In order to apply this trip exchange DAS conversion consistently, if the vessel fishes any part of an ETAA trip it gained through a trip exchange, those landings will be converted to DAS, using the same calculation described previously, and deducted from any DAS credit applied to FY 2011, rather than deducted in FY 2012. Although the Council has generally applied pay-back measures due to late framework implementation in the subsequent FY, this DAS credit, if applied to the subsequent FY, could have unintended ACL implications in FY 2012 by increasing the risk that the

LA fleet could exceed the ACL for that FY.

Framework 22 limits each full-time vessel to a total of only four access area trips in FY 2011. For the reason outlined above, a full-time vessel that receives an additional Delmarva trip through a trip exchange prior to Framework 22's implementation may end up with five access area trips as a result of the mid-year implementation of this rule. However, because this result would create an inconsistency in measures, this final rule clarifies that the 4-trip limit supersedes the potential for a vessel owner to have 5 access area trips, to avoid the potential risk of exceeding FY 2011 catch limits. If a full-time vessel receives a final FY 2011 allocation of five trips due to a previous trip exchange, that vessel must relinquish one trip in FY 2011 from its available access area trip allocation so that it receives the same number of access area trips as all other full-time vessels (*i.e.*, four trips). As soon as possible after the publication of this final rule, NMFS will send a notification letter to the owner of such a vessel regarding the requirement that one of the vessel's unused access area trips must be relinquished in FY 2011 to account for the previous trip exchange.

The vessel owner will be given the opportunity to select the area from which the trip will be deducted, with NMFS determining the area if the vessel owner fails to respond within 30 days as requested.

No access area trips were allocated for CAI and CAII, and HC closed prior to this final rule, so no trips into those areas could be taken until Framework 22 is effective.

In FY 2012, all full-time scallop vessels are allocated a total of four access area trips (Table 5). Each full-time vessel is allocated one trip into CAII, and one trip into HC. The remaining two access area trips are allocated in the following combinations: One trip in CAI and one trip in NLS; one trip in CAI and one additional trip in HC; one trip in CAI and one trip in Delmarva; one trip in NLS and an additional trip in HC; one trip in NLS and one trip in Delmarva; or an additional trip in HC and one in Delmarva. Trip assignments, based on a random vessel assignment to the four applicable areas noted above, will be available prior to the start of FY 2012. Each part-time scallop vessel is allocated two trips in FY 2012, which could be taken in one of the following combinations: Two trips in HC; one trip

in the CAI and one trip in NLS; one trip in CAI and one trip in HC; one trip in CAI and one trip in Delmarva; one trip in NLS and one trip in HC; one trip in NLS and one trip in Delmarva; or one trip in HC and one trip in Delmarva. Each occasional vessel is allocated one trip, which could be taken in any one open access area.

At the start of FY 2013, all full-time scallop vessels will be allocated one trip in CAII, one trip in NLS, and one trip in HC (Table 5). In addition, half the fleet will be allocated a trip in Delmarva and the other half of the fleet will be allocated another trip in HC, for a total of four access area trips for each full-time vessel. These allocations will be assigned and made publically available prior to the start of FY 2013. A part-time scallop vessel will be allocated two trips, which could be taken in one of the following combinations: Two trips in HC; one trip in CAII and one trip in NLS; one trip in CAII and one trip in HC; one trip in CAII and one trip in Delmarva; one trip in NLS and one trip in HC; one trip in NLS and one trip in Delmarva; or one trip in HC and one trip in Delmarva. An occasional vessel will be allocated one trip, which could be taken in any one open access area.

TABLE 5—SCALLOP ACCESS AREA TRIP ALLOCATIONS FOR FULL-TIME LA SCALLOP VESSELS DURING FY 2011–2013.\*

	CAI	CAII	NLAA	HC	Delmarva
2011 .....	1.5	0.5	.....	1	1
2012 .....	0.5	1	0.5	1.5	0.5
2013 .....	.....	1	1	1.5	0.5

\* Split-fleet trips are identified by "0.5" and "1.5": The "0.5" indicates that half the fleet will be allocated one full trip into a specific access area and the "1.5" indicates that all full-time vessels will be allocated one full trip into a specific access area and half of the vessels will be allocated an additional full trip into that area.

*LAGC Measures*

1. *Sub-ACL for LAGC IFQ Vessels.* For LAGC IFQ vessels, this final rule sets a 2,910,800-lb (1,320-mt) ACL for FY 2011, a 3,095,450-lb (1,404-mt) ACL for FY 2012, and an initial ACL of 3,067,000 lb (1,391 mt) for FY 2013 (Table 1). IFQ allocations, not including carryover IFQ, are calculated by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY will be deducted by the amount of the overage.

2. *Sub-ACL for LA Scallop Vessels With IFQ Permits.* For LA scallop vessels with IFQ permits, this final rule sets a 291,080-lb (132-mt) ACL for FY 2011, a 309,550-lb (140-mt) ACL for FY 2012, and an initial ACL of 306,700-lb (139 mt) for FY 2013 (Table 1). IFQ

allocations, not including carryover IFQ, are calculated by applying each vessel's IFQ contribution percentage to these ACLs. These allocations assume that no LAGC IFQ AMs are triggered. If a vessel exceeds its IFQ in a given FY, its IFQ for the subsequent FY will be reduced by the amount of the overage.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* The LAGC IFQ fishery is allocated 5.5 percent of the overall TAC in each access area for FYs 2011 through 2013. LAGC IFQ vessels are not allocated trips into CAII, because these vessels are not expected to fish in that area due to its distance from shore. These percentages result in a specific number of fleet-wide trips for LAGC vessels fishing in access areas (Table 6). The areas will close to LAGC vessels when the Regional Administrator determines that the allocated number of

trips have been taken in the applicable area.

TABLE 6—LAGC FLEET-WIDE ACCESS AREA TRIP ALLOCATIONS FOR FYS 2011 THROUGH 2013

Access area	FY 2011	FY 2012	FY 2013
CAI .....	890	296	.....
CAII .....	0	0	0
NLS .....	.....	296	595
HC .....	593	887	893
Delmarva ....	593	296	298

Because this action is implemented after the start of FY 2011, and the FY 2010 regulations that continued into FY 2011 are inconsistent with the regulations in this final rule, it is possible that LAGC scallop vessels could exceed the final FY 2011 fleet-wide trip allocation in Delmarva under Framework 22. The current regulations

allocate a total of 714 LAGC trips into Delmarva. If LAGC vessels exceed the final number of allocated trips from Delmarva in FY 2011, the number of excess trips will be deducted from the LAGC IFQ fleet Delmarva trip allocation in FY 2012. Although there have been some LAGC trips into the ETAA at the start of FY 2011, this area changes to an open area under this final rule. Because any landings from trips taken in the ETAA will be deducted from each vessel's IFQ allocations, and because there are no specific fleet-wide trips allocated to LAGC vessels fishing in open areas, there is no pay-back measure associated with LAGC vessels that fished in the ETAA prior to the implementation of this final rule.

4. *NGOM TAC.* This action sets a 70,000-lb (31,751-kg) annual NGOM TAC for FYs 2011 through 2013. These allocations for FY 2012 and FY 2013 assume that in a given FY there are no overages, which would trigger a pound-for-pound deduction in the subsequent FY to account for the overage based on the measures in Amendment 15.

5. *Scallop Incidental Catch Target TAC.* This action sets a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FYs 2011 through 2013 to account for mortality from this component of the fishery, and to ensure that F-targets are not exceeded.

*Research Set-Aside (RSA) Allocations*

As specified in Amendment 15, this action deducts 1.25 M lb (567 mt) of scallops annually for FYs 2011 through 2013 from the ABC and sets it aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA projects. Upon the effective date of Amendment 15 measures, this set-aside will be available for harvest in open areas. Framework 22 sets the access area rotation schedule, and vessels will be able to harvest RSA from access areas upon the effective date of this final rule to implement Framework 22 measures. Unlike previous scallop framework adjustments, Framework 22 does not set specific RSA quota allocations within specific access areas. Projects are now assigned harvest allocations through the RSA application review and approval process, and a vessel with available RSA could harvest allotted RSA from an access area until the RSA allocated to that vessel and/or project is fully harvested.

*Observer Set-Aside Allocations*

This action removes 1 percent from the ABC and sets it aside for the industry-funded observer program to

help defray the cost of carrying an observer. This observer set-aside is further divided proportionally into access areas and open areas. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, and scallop vessels on an observed access area trip are authorized an increased possession limit. The Regional Administrator has specified the following compensation rate for FY 2011: Vessels carrying an observer will receive 180 lb (82 kg) of scallops per day, or part of a day, when fishing in an access area, and LA DAS vessels will be compensated 0.08 DAS per DAS fished during observed open area trips (i.e., vessels will be charged 0.92 DAS per DAS fished with an observer onboard). The Regional Administrator shall periodically review, at least once prior to each fishing year, all available fishery information to determine if these rates should be adjusted. The FY 2011 through 2013 observer set-aside allocations for open and access areas are outlined in Table 7.

TABLE 7—OPEN AREA, ACCESS AREA, AND TOTAL OBSERVER SET-ASIDE TACS FOR FYS 2011 THROUGH 2013

[Mt, unless otherwise specified]

Area	FY 2011	FY 2012	FY 2013
Open areas	139	161	136
Open (in DAS) .....	137	133	112
CAI .....	51	16	N/A
CAII .....	16	31	36
NLS .....	N/A	16	38
HC .....	34	49	57
Delmarva ....	34	16	19
Total .....	273	290	287

*Measures To Minimize the Impacts of Incidental Take of Sea Turtles*

Under the Endangered Species Act (ESA), each Federal agency is required to ensure its actions are not likely to jeopardize the continued existence of any listed species or critical habitat. If a Federal action is likely to adversely affect a listed species, section 7 of the ESA requires formal consultation. To date, five formal consultations, with resulting Biological Opinions, have been completed on the Atlantic sea scallop fishery. All five have had the same conclusion: The continued authorization of the scallop fishery may adversely affect, but is not likely to jeopardize, the continued existence of four sea turtles species (Kemp's ridley, loggerhead, green, and leatherback). In the accompanying Incidental Take Statements of the Biological Opinions,

NMFS is required to identify and implement non-discretionary reasonable and prudent measures (RPMs) necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions (T/C) for implementing each RPM. RPMs and T/C cannot alter the basic design, location, scope, duration, or timing of the action, and may involve only minor changes. Five RPMs and T/Cs were identified in the most recent Biological Opinion, as amended on February 5, 2009. This final rule includes management measures to comply with the first of these RPMs, which requires a limit of fishing effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with scallop fishing activity. The Biological Opinion requires that this restriction be limited to a level that will not result in more than a minor impact on the scallop fishery.

For FYs 2011 through 2013, Framework 22 defines "more than a minor impact" on the fishery as one that results in a 10-percent or greater shift in baseline effort from the Mid-Atlantic during June 15 through October 31 into other areas and times of year when sea turtle interactions are less likely. This definition, as well as management measures to comply with the Biological Opinion and any future Biological Opinions, will be re-evaluated for FY 2013 and future fishing years in subsequent framework actions (or if a new Biological Opinion occurs, a framework can be reinitiated). An informal consultation under the ESA was prepared to analyze the impact of the Framework 22 on threatened and endangered sea turtles and NMFS has determined that fishing activities pursuant to Framework 22 will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

For FYs 2011 through 2013, each full-time and part-time vessel will be restricted to taking one access area trip to areas in the Mid-Atlantic (i.e., HC and Delmarva) during June 15 through October 31 of each FY. However, this final rule includes an additional provision for full-time vessels: If a vessel has traded access area trips with another vessel so that it has a total allocation of four trips in the Mid-Atlantic access areas, the vessel will be able to fish up to two of the four trips from June 15 through October 31. This measure is only applicable to full-time vessels, because part-time vessels are only allocated a total of two access area trips to be fished in any open access area. Occasional vessels are not affected by this measure because they are only

allocated a single access area trip. This provision is to minimize any distributional impacts that may result from the "split fleet" trip random allocation assignment and allows for more flexibility in access area trip exchanges. LAGC vessels fishing in the Mid-Atlantic access areas under the fleet-wide IFQ trips are also not affected by this trip restriction.

Compliance with the trip restriction will be monitored using pounds landed during June 15 through October 31, rather than trip declarations, which could result in landings that are less than the allowable trip possession limit. For example, full-time and part-time LA vessels will be restricted to landing a maximum of 18,000 lb (8,165 kg) per trip for full-time vessels and 14,400 lb (6,532 kg) per trip for part-time vessels from those areas (i.e., the equivalent of one full access area trip, depending on the permit category's possession limit). Additionally, if a full-time vessel has acquired four Mid-Atlantic access trips due to a trip exchange(s), that vessel will be restricted to landing a combined maximum of 36,000 lb (16,329 kg) from HC and Delmarva (i.e., the equivalent of two full access area trips).

Compensation trips may not be combined during this time period in a way that will allow more than 14,400 lb (6,532 kg) for part-time vessels, 18,000 lb (8,165 kg) for full-time vessels, or 36,000 lb (16,329 kg) for full-time vessels with a total allocation of four Mid-Atlantic access area trips, to be landed from HC and Delmarva, combined, from June 15 through October 31 of FYs 2011 through 2013. For example, if a full-time vessel is allocated two total trips into the Mid-Atlantic access areas and that vessel declared and subsequently broke one of the two trips into Mid-Atlantic access areas prior to June 15, it will have one full trip (i.e., 18,000 lb, 8,165 kg) available for use during the trip-restriction window. In that case, the vessel could only harvest up to 18,000 lb (8,165 kg) total from June 15 through October 31, in the Mid-Atlantic access areas, either by fishing its compensation trip and part of its full access area trip, or by fishing only one full access area trip and waiting to declare the compensation trip on or after November 1. If a vessel fishes any part of an access area trip in HC or Delmarva during this time period (i.e., starts a trip on June 13 and ends the trip on June 15), landings from that trip will count towards the one- or two-trip limit. The additional pounds allocated to vessels with on-board observers during trips taken within this time period will not count

towards the aforementioned possession and landing restrictions.

Because this final rule is implemented mid-year, and the current regulations are inconsistent with the proposed specifications, it is possible that full-time and part-time vessels could exceed their final FY 2011 access area trip restrictions prior to this rule becoming effective. If this measure is implemented after June 15, 2011, a full-time or part-time vessel that landed more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg), respectively (i.e., more than the equivalent of one full access area trip), between June 15, 2011, and the implementation of Framework 22, will be prevented from taking an access area trip in FY 2012 in the Mid-Atlantic during June 15 through October. Alternatively, a full-time vessel could make up for the overage by trading in trips so that it had a total of four trips allocated into the Mid-Atlantic access areas and continue to fish up to a maximum of 36,000 lb (16,329 kg) through October 31, 2011 (i.e., the equivalent of two full access area trips).

Under this final rule, the Delmarva and ETAA seasonal closures are no longer in effect.

#### *Elimination of the GB Access Area Rotational Schedule*

This action eliminates the default GB access area schedule that was implemented through Framework 16 to the FMP (69 FR 63460; November 2, 2004). The Council intended that this default cycle would be in place until the Council modified it through a future action. The schedule has based access area openings on the premise that an area would be open for 1 year, followed by a 2-year closure. However, the schedule has been consistently revised in framework actions based on area-specific scallop biomass projections. The pre-defined schedule has led to inconsistencies between roll-over measures at the start of a FY when a framework is delayed and unnecessary confusion. This final rule removes the schedule from the regulations, allowing for the GB access area scheduled openings to be based on updated resource information. Third-year default measures (e.g., FY 2013) will provide the access area schedule for a subsequent FY if the subsequent framework action is delayed past the start of the FY.

#### *Comments and Responses*

NMFS received three comment letters in response to the proposed rule from the Fisheries Survival Fund (FSF), writing on behalf of full-time limited access scallop fleet members; a member

of the United National Fishermen's Association; and an individual. Six relevant issues relating to the proposed Framework 22 measures were raised and are responded to below. Other comments were not relevant to this rulemaking and are therefore not responded to in this final rule. FSF submitted comments that were related to Amendment 15 management measures, and those will be addressed in the final rule to Amendment 15. NMFS may only approve, disapprove, or partially approve measures in Framework 22, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the MSA to discharge its responsibility to carry out such measures.

*Comment 1:* Although generally supportive of Framework 22 management measures, FSF commented that there is an ongoing appearance of exceeding catch targets in the scallop fishery due to precautionary DAS allocations based on underestimated LPUE in open areas. FSF also commented that, because the inshore areas are not being surveyed by NMFS, overall scallop biomass is consistently underestimated, and they requested increased survey coverage and expansion of cooperative surveys with the industry.

*Response:* NMFS recognizes that Framework 22 allocates open area DAS that are lower than Framework 21 allocations, but disagrees that these DAS allocations are overly precautionary. These decreases are the result of modifications to the LPUE calculation applied to the DAS model used in Framework 22. Underestimation of this increase in LPUE in previous frameworks resulted in greater-than-expected landings due to higher DAS allocations. The adjusted LPUE values have increased, resulting in lower overall DAS allocations that take into account higher effort levels. In addition, the fleet dynamics model, which predicts the level and location of fishing effort under proposed measures, has been adjusted to more accurately predict LPUE by predicting that effort will be concentrated in areas with the highest yield per day fished. Even with the decrease in DAS allocations, total landings are projected to be slightly higher than FY 2010 landings, as projected under Framework 21.

An increase in LPUE is not necessarily a reliable indicator of increased biomass and, as such, the recent increases in LPUE do not necessarily demonstrate that surveys are underestimating overall biomass. Current scallop catch rates in open areas

have been the highest on record. Although the increase is in part due to increased open area biomass as observed in surveys (the most recent survey was in May-July 2010), LPUE has increased considerably faster than survey biomass, likely due to improved efficiencies of commercial operations and the larger meat sizes that allow more pounds to be shucked per hour.

There were some survey tows conducted in inshore areas in recent years, and an estimate of the biomass from non-regularly surveyed areas was included in the last stock assessment. Estimates from the 2010 stock assessment, which were endorsed by the SARC-50 review panel, are best available science, and show that biomass was just above, and fishing mortality at, maximum sustainable yield (MSY) levels in 2009. The survey data indicate that allocations in FY 2011 need to be lower than those in place in FY 2009 in order to meet the management target F.

While the commenter may find higher DAS allocations preferable, NMFS must approve or disapprove the measure in Framework 22, and has determined that the DAS allocations proposed through Framework 22 are consistent with National Standard 1 of the MSA and are based on the best scientific information available, as required by National Standard 2.

With regards to increased cooperative surveys, Amendment 15 had made a number of adjustments to the Scallop RSA Program, including increasing the RSA quota to 1.25 M lb (567 mt), which will allow for more research projects to be funded through this process. NMFS continues to encourage industry members to participate in the RSA Program.

*Comment 2:* FSF stated that the timing of scallop framework actions needs to be expedited so that mid-year implementation of specifications is avoided.

*Response:* Although NMFS also has concerns about the timing of scallop framework actions, and agrees that it would be better for all stakeholders if these actions were developed and implemented prior to the start of the first scallop FY to which they apply, NMFS does not consider the timing problems to be a fatal flaw to Framework 22. NMFS will continue to work with the Council and the industry to avoid these delays in the future. As FSF mentioned in its comment letter, specifying third-year default measures will assist in reducing the need for confusing and cumbersome payback measures that have been included in a number of scallop frameworks, which

have been incorporated due to early anticipation during the development process that these measures would be delayed past the start of the FY to which they apply.

*Comment 3:* A member of the United National Fishermen's Association expressed frustration that the management measures in Framework 22 are confusing, but did not clarify whether the confusion lies in the organization of the EA or the management measures themselves. The commenter also stated that Framework 22 measures should be applied in FY 2012, rather than in FY 2011.

*Response:* Although the commenter did not specify which management measures he felt were confusing, or offer specific suggestions to help simplify such measures, NMFS recognizes that confusion can arise when development and implementation of specification-setting frameworks are delayed past the start of the FY for which they are intended to be applied. As mentioned above, including third-year default measures will reduce future confusion and the need for burdensome payback measures in the future. NMFS disagrees that the specifications for FY 2011 should remain as they currently are and that management measures in this action should only be effective beginning in FY 2012. The roll-over FY 2010 measures currently in place do not reflect the most recent information on scallop biomass available for sustainable harvest in FY 2011. The FY 2011 allocations in Framework 22 are based on the best scientific information for FY 2011 and are more economically favorable to the scallop industry: Total fleet revenue is estimated to increase by \$35 M in FY 2011 compared to the revenues anticipated under the management measures that have been in effect since March 1, 2011. Since there is no basis to disapprove the application of these measures to FY 2011, the MSA requires their implementation in 2011.

*Comment 4:* FSF requested that Framework 22 and Amendment 15 be implemented at the earliest time possible.

*Response:* NMFS recognizes that ideally Framework 22 would have been implemented on or before March 1, 2011, but for various reasons during the development and submission of this action, and because it relies on the approval of Amendment 15, which was also delayed, implementing these measures at the start of FY 2011 was not possible. Applicable laws, including the MSA and the Administrative Procedure Act (APA), impose certain time constraints to ensure there has been adequate prior notice of opportunity for

public comment and adequate time to ensure that regulated members of the public can be notified of this rule. For these reasons there has been necessary delay in implementing Framework 22.

*Comment 5:* One commenter suggested that the scallop quotas should be reduced by 50 percent because they are too high, but provided no rationale for why the quotas should be reduced in the manner suggested.

*Response:* There is no known scientific basis for why such a reduction is necessary. The reasons presented by the Council and NMFS for recommending the quota allocations for FYs 2011 through 2013, which are discussed in the preambles to both the proposed rule and this rule, are based on the best scientific information available and are consistent with the control rules outlined in Amendment 15's ACL process. Scallops are currently not considered overfished or subject to overfishing. Sufficient analysis and scientific justification for NMFS' action in this final rule are contained within the supporting documents.

*Comment 6:* One commenter suggested that Framework 22 should have required an EIS rather than an EA, but did not provide any justification for why an EIS would be necessary.

*Response:* NOAA Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. On July 22, 2005, NOAA published a Policy Directive with guidelines for the preparation of a Finding of No Significant Impacts. In addition, the Council of Environmental Quality (CEQ) regulations at 40 CFR 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." The significance of this action was analyzed based on the NAO 216-6 criteria, the 2005 NOAA Policy Directive, and CEQ's context and intensity criteria. Based on the analysis contained in the supporting EA prepared for Framework 22, as well as the EIS for Amendment 15, NMFS determined that Framework 22 will not significantly impact the quality of the human environment and all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Therefore, NMFS finds that preparation of an EIS for this action is unnecessary.

#### Changes From Proposed Rule to Final Rule

In § 648.58, paragraph (e) is removed to eliminate the temporary regulations added by the June 1, 2011, emergency action to close NLS.

In § 648.59, paragraphs (b)(3) and (d)(3) are added to incorporate the updated access area coordinates for CAI and NLS, respectively. In addition, paragraph (d)(5) is revised to no longer include pay-back measures applicable to vessels if they fished in the NLS in FY 2011 prior to the implementation of Framework 22 management measures. These payback measures are no longer necessary due to the emergency action that closed the NLS prior to June 15, 2011. This closure will be continued throughout the rest of the NLS open season as part of Framework 22 measures.

In § 648.60, the text in paragraph (a)(3)(i) has been clarified to explain how vessels that end up with a total allocation of five access area trips (*i.e.*, one more trip than permitted through this final action) as a result of a trip exchange that occurred prior to the mid-year implementation of Framework 22, will relinquish one of their trips in FY 2011 to account for the unintended overage.

Other editorial and minor changes were made throughout the rule to clarify various provisions in this action. In addition, any relevant changes to the regulatory text at § 648.53 made in the Amendment 15 final rule were also incorporated in this rule.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the MSA and other applicable laws. The regulatory language in this final rule has incorporated, where applicable, the regulatory language in Amendment 15.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

The Assistant Administrator for Fisheries has determined that the need to implement these measures in an expedited manner in order to help achieve conservation objectives for the scallop fishery and certain fish stocks, as well as threatened and endangered sea turtles, constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness.

If there is a 30-day delay in implementing the measures in Framework 22, the scallop fleet will continue under the current access area schedule, as well as access area trip, DAS, IFQ, RSA and observer set-aside allocations. The DAS allocations are higher than the measures in Framework 22, which were developed to reflect an updated estimate of the annual catch

that can be harvested without resulting in overfishing. Accordingly, a delay in effectiveness risks creating a race to fish in advance of this rule's measures, and vessel owners and operators have the potential of exceeding the catch levels specified in Framework 22 for FY 2011. Allocations in FY 2011 need to be lower than those in place in FY 2010 in order to meet the management target F. Estimates from the 2010 stock assessment, which were endorsed by the SARC-50 review panel, are best available science, and show that biomass was just above, and fishing mortality was at, MSY levels in 2009. In addition, actual F has been higher than projected in FYs 2008-2010, a situation which was addressed in the DAS model used to calculate the Framework 22 allocations. Further continuation of the inconsistent FY 2010 management measures increases the risk that the actual F will exceed the target level upon which Framework 22 management measures are based. Constraining the implementation of Framework 22 by instituting a 30-day delay in effectiveness would be contrary to the public interest because continuing this trend in higher-than-projected F could result in overfishing and future decreases in allowable harvest. Current scallop catch rates in open areas have been the highest on record, and vessels may continue to fish beyond their Framework 22 DAS allocations until this action is effective because they are limited in where else they can fish.

In addition, Framework 22 includes management measures to minimize fishery interaction with threatened and endangered sea turtles and prevent overfishing. Specifically, Framework 22 includes a measure that specifies vessels may take only one access area trip in HC and Delmarva (combined) between June 15 and October 31, 2011. This limitation complies with one of the RPMs in the most recent Biological Opinion completed for the scallop fishery. The Biological Opinion examined fishery interactions with threatened and endangered sea turtles and specified RPMs to minimize the impacts on sea turtles. If implementation is delayed further beyond June 15, 2011, the measures from last year will continue (*i.e.*, up to two trips in Delmarva or the ETAA combined). Although many vessels have already utilized their Delmarva trip and it may be unlikely that vessels will fish in the ETAA, there is still a potential that a delay in effectiveness could compromise sea turtle conservation benefits during this short window.

Expediting the implementation of Framework 22 measures will also have

greater public benefit because enacting the allocations of IFQ, RSA, and access area trips would have positive impacts on the economics of the fishery. Currently, with biomass in the ETAA not producing valuable trips and the NLS closed through emergency action, most vessels have already fished their Delmarva access area trips and have no other access areas available from which to harvest scallops. Framework 22 will open up three additional access areas for vessels (*i.e.*, HC, CAI, and CAII) and take pressure off of vessel owners/operators from using more DAS than allocated in FY 2011, which would result in equivalent reductions of their DAS allocations in FY 2012 to account for their overages. In addition, LAGC IFQ vessels will be able to take advantage of their increased IFQ allocations. Additionally, researchers funded through the Scallop RSA Program are unable to harvest the FY 2011 RSA in CAI, CAII, and HC until those access areas are opened by Framework 22. These RSA allocations provide funding for research. Many of the surveys that will be funded under the FY 2011 RSA Program optimally need to occur during this time. A 30-day delay in effectiveness would slow down the grant process by not providing researchers with their RSA scallop allocations, which will undermine the ability of researchers to complete their research projects and potentially hinder the quality of their research.

NMFS was unable to incorporate the 30-day delay in effectiveness into the timeline for Framework 22 rulemaking due to the Council's January 2011, submission of Amendment 15 and March 2011, final submission of Framework 22, which was more than 3 weeks after the March 1 start of the 2011 scallop FY. However, NMFS must also consider the need of the scallop industry to have prior notice in order to make the necessary preparations to begin fishing under these finalized measures (*e.g.*, time to notify the observer program; collect the necessary equipment and notify crew; plan for the steam time to get to an area once it opens; or return from a trip started prior to the effective date of this action, should the vessel owner/operator want to fish in a more preferable area during this time of year). For these reasons, NMFS has determined that implementing these measures with a shorter 10-day delay in effectiveness would have the greatest public benefit.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 22 in this final rule. The

FRFA consists of and incorporates the IRFA, the relevant analyses and summaries thereof prepared for Framework 22, and the following discussion. This FRFA describes the economic impact that this final rule, along with non-adopted alternatives, will have on small entities. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**).

#### *Statement of Objective and Need*

This action sets the management measures and specifications for the Atlantic sea scallop fishery for FY 2011 and FY 2012, with FY 2013 default measures. A description of the action, why it is being considered, analysis of proposed and final measures considered for Framework 22, and the legal basis for this action are contained in Framework 22 and the preambles of the proposed and final rules and are not repeated here.

#### *Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

The RFA defines a small business entity in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation (including its affiliates), with receipts of up to \$4 million annually. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than \$4 million according to the dealer's data for FYs 1994 to 2009. In FY 2009, total average revenue per full-time scallop vessel was just over \$1 million, and total average scallop revenue per general category vessel was just under \$80,000. The IRFA for this and prior Scallop FMP actions does not consider individual entity ownership of multiple vessels. More information about common ownership is being gathered, but the effects of common ownership relative to small versus large entities under the RFA is still unclear and will be addressed in future analyses.

The Office of Advocacy at the Small Business Association (SBA) suggests two criteria to consider in determining the significance of regulatory impacts; namely, disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Framework 22 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion, because all entities are considered to be small entities in the

scallop fishery and, therefore, the action would not place a substantial number of small entities at a significant competitive disadvantage relative to large entities. A summary of the economic impacts relative to the profitability criterion is provided below under "Economic Impacts of Proposed Measures and Alternatives."

The measures contained in this final rule affect vessels with LA and LAGC scallop permits. The Framework 22 document from the Council provides extensive information on the number and size of vessels and small businesses that will be affected by these regulations, by port and state. There were 313 vessels that obtained full-time LA permits in 2010, including 250 dredge, 52 small-dredge and 11 scallop trawl permits. In the same year, there were also 34 part-time LA permits in the sea scallop fishery. No vessels were issued occasional scallop permits. By the start of FY 2010, the first year of the LAGC IFQ program, 362 IFQ permits (including 40 IFQ permits issued to vessels with a LA scallop permit), 127 NGOM, and 294 incidental catch permits were issued. Since all scallop permits are limited access, vessel owners would only cancel permits if they decide to stop fishing for scallops on the permitted vessel permanently or if they transfer IFQ to another IFQ vessel and permanently relinquish the vessel's scallop permit. This is likely to be infrequent due to the value of retaining the permit. As such, the number of scallop permits could decline over time, but would likely be by fewer than 10 permits per year.

#### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

No public comments were received in response to the IRFA summary in the proposed rule.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action contains no new collection-of-information, reporting, and recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

#### *Description of the Steps the Agency has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

The aggregate economic impacts of these final measures, including the open area DAS and access area allocations for LA vessels and ACLs for the LAGC fishery, are expected to be positive in both in the short-term (FYs 2011–2012) and the long-term (FYs 2011–2022) compared to the No Action alternative and all other alternatives considered. Estimated fleet revenues under the adopted action in FY 2011 are slightly lower than the average fleet revenues in FYs 2009 and 2010. In FY 2012, revenues are expected to exceed the average revenues in FYs 2009 and 2010. The adopted action is not expected to have short-term adverse impacts on the revenues and profits of the scallop vessels compared to recent levels. The impact of four allocation alternatives were evaluated in Framework 22: One alternative proposing a new closure in the Great South Channel (GSC; the "GSC closure" alternative); one alternative with full-time "split fleet" allocations and no new closure (the proposed action); one alternative with identical access area allocations (i.e., all full-time vessels are allocated access into the same areas) (the "identical fleet allocation" alternative) and the No Action alternative. With the exception of the No Action alternative, the total number of access area trips allocated to LA vessels was the same for all alternatives.

The definition of "No Action" refers to the continuation of the allocations that are specified in the current regulations. However, because of the restrictions set forth by the current GB rotational area schedules, which determine outside of annual allocations when an access area will be opened or closed to fishing in a given FY, the No Action alternative does not result in the same allocations or revenues as in FY 2010. Rather, No Action would result in one less access area trip in FY 2012 compared to FY 2010 due to the closure of NLS (i.e., the current regulations close the NLS in FY 2012). Note that although the current regulations now include a suspension of the opening of NLS in FY 2011, due to the emergency

action put in place on June 1, 2011, this area could conceivably open under No Action after 186 days and vessels could potentially fish their NLS allocations during the last 2 months that area is open in FY 2011. As a result, the No Action alternative is still analyzed based on four access area trips in FY 2011. In addition, No Action would allocate two trips to a less productive area (i.e., the ETAA) in FY 2011 and beyond. Due to these restrictions associated with No Action, the fishing effort in the access areas and landings overall is expected to be significantly lower compared to actual levels in FYs 2009 and 2010. As a result, the No Action alternative would result in significantly lower revenues (\$364.5 M in FY 2011 and \$290.2 M in FY 2012) compared to the actual revenues in FY 2009 (\$379.5 M) and in FY 2010 (\$431 M). From the perspective of the impacts on the economy and of the participants in the fishery, a baseline that would reflect potential economic impacts relative to the recent levels of allocations would be a more useful comparison. For this purpose, a Status Quo scenario was also incorporated into the economic analysis. This scenario allocated vessels exactly the same amount of access area trips and DAS in FYs 2011 and 2012 as they had the opportunity to take in FY 2010, resulting in projected revenues (\$433.1 M in FY 2011) that are very similar to the estimated revenues for FY 2010. Note that the Status Quo alternative is used here for analytical purposes in the economic impact analysis of Framework 22's allocations alternatives, but was not actually considered by the Council, because it is based on an infeasible scenario that would increase the scallop fishing mortality above sustainable levels, resulting in reduced scallop yield and revenues in the long-term.

Framework 22 will be implemented mid-year, roughly 4 months after the start of FY 2011 (March 1, 2011). In the interim, the FY 2010 management measures and allocations have been extended into FY 2011 until this final rule is implemented. These current roll-over measures include open area LA allocation that are higher than those specified under Framework 22 (i.e., 38 DAS per full-time LA vessel, 15 DAS per part-time vessel, and 3 DAS per occasional vessel). Additionally, although the total number of access area trips allocated to LA vessels remains the same under Framework 22 as what was allocated for the start of FY 2011 (i.e., four trips), the access areas from where these trips can be taken will differ. The Framework 22 document presented by

the Council included a number of provisions to account for the inconsistencies between allocations in effect at the start of FY 2011 and those that will be implemented by this rule. Generally, any overages incurred in FY 2011 will result in a pound-for-pound (or DAS-for-DAS) deduction in FY 2012 to account for excess landings and fishing effort not accounted for in the Framework 22 biomass projections and resulting annual allocations. As a result, vessels that choose to exceed the FY 2011 allocations in Framework 22 would have slightly higher revenues than the estimated fleet average in FY 2011, resulting in positive short-term impact on those individual vessels in FY 2011. Subsequently, those vessels receive reduced individual allocations in FY 2012 to account for the FY 2011 overage incurred by the vessel. This reduction will result in slightly lower revenues than the estimated average in FY 2012, resulting in a negative short-term impact on those vessels in FY 2012. However, over the long-term, the overage provisions proposed in Framework 22 are expected to reduce the negative impacts of overfishing in FY 2011 on the scallop resource. Therefore, these measures will have positive fleet-wide impacts on landings and revenues over the long term. No other alternatives were considered in this action because these payback measures are necessary to ensure that the scallop fleet does not exceed the harvest allocations specified in this action due to its mid-year implementation. In the future, the inclusion of third-year default measures in this action and in future biennial framework adjustments, as specified in Amendment 15, will reduce and/or eliminate the need for these types of payback measures. These default measures are also expected to have potentially positive economic impacts. If resource conditions turn out to be less favorable in FY 2013 than suggested by the current biological projections, and the next framework is delayed, this measure will allocate only 26 DAS, rather than 35 DAS, to prevent potentially negative impacts on the resource, including impacts on scallop yield and subsequent impacts on scallop prices.

#### *Economic Impacts of the Final Action*

The following describes all of the alternatives considered by the Council.

##### 1. Allocations for the LA and LAGC Scallop Fleets—Aggregate Impacts

The adopted open area DAS allocations are expected to prevent overfishing in open areas. This final rule

implements the following vessel-specific DAS allocations for FYs 2011 and 2012: Full-time vessels will be allocated 32 and 34 DAS, respectively; part-time vessels will be allocated 13 and 14 DAS, respectively; and occasional vessels will receive 3 DAS for each FY. Additionally, full-time vessels will receive a total of four access area trips, part-time vessels will receive two access area trips, and occasional vessels will receive one access area trip.

The Framework 22 analysis of the fleet-wide aggregate economic impacts indicates that the adopted alternative and all other alternatives will have positive economic impacts on the revenues and profits of the scallop vessels in the short-term (FYs 2011 and 2012), compared with the No Action alternative. Total fleet revenue under the adopted action is estimated at \$399.1 million in FY 2011 and \$428.4 million in FY 2012. Additionally, net revenues per vessel (i.e., gross revenues minus trip costs, used as a proxy for profits) are estimated to be \$1,014,659 and \$1,089,108 in FY 2011 and FY 2012, respectively. Compared with No Action fleet revenues (\$364.5 M in FY 2011 and \$290.1 M in FY 2012), the adopted action will result in increases in fleet revenues of 9.6 percent and 47.6 percent in FYs 2011 and 2012, respectively; the "GSC closure" alternative would result in increases in revenues by 2.2 percent and 44.9 percent in FYs 2011 and 2012, respectively; and the "identical fleet allocation" alternative would result in increases in revenues by 10.3 percent and 44.3 percent in FYs 2011 and 2012, respectively. In terms of net revenues per vessel (\$917,452 in FY 2011 and \$732,848 M in FY 2012 for No Action), the adopted action will result in higher vessel net revenues (10.6 percent in FY 2011 and 48.6 percent in FY 2012). Vessel net revenues would be higher under the "GSC closure" and "identical fleet allocation" alternatives, as well, ranging between 3.1–11.3 percent higher in FY 2011 and 45.2–45.5 percent higher in FY 2012. In both the short- and long-term, the adopted action will result in larger cumulative fleet and vessel net revenues than both the "GSC closure" alternative and the "identical fleet allocation." The adopted action's fleet revenues are estimated to exceed the revenues for the "identical fleet allocation" alternative by \$6.5 M and \$53 M in the short- and long-term, respectively. The adopted action's revenues are expected to exceed those for the "GSC closure" alternative by an even greater amount: \$33.5 M and \$98.9 M more in the short- and long-

term, respectively. Furthermore, the adopted action will result in a more constant stream of landings compared to the other two alternatives, providing stability in business. There are no alternatives that would generate higher economic benefits for the participants of the scallop fishery.

Compared to the Status Quo, the adopted action will result in gross fleet revenues about \$47.9 M lower in the short-term, resulting in estimates of gross revenue per vessel to be 7.9 percent and 4.1 percent, less than those under Status Quo in FY 2011 and FY 2012, respectively. These decreases in fleet and vessel revenues compared to those estimated under Status Quo are because the Status Quo alternative does not take projected scallop biomass levels into account: Although landings and revenues are higher in the short-term under the Status Quo scenario, by setting future allocations based on an F that exceeds sustainable levels, the Status Quo reduces yield and revenues in the long-term. From FYs 2011–2022, the adopted action will have positive economic impacts compared to Status Quo, exceeding Status Quo fleet revenues by \$19.8 M. Over the medium-term (FYs 2011–2015), the adopted action will result in higher revenues per vessel compared to the Status Quo—5.8 percent in FY 2013 and 3.7 percent in FYs 2014 and 2015—thus offsetting the decreases in FYs 2011 and 2012. Because the cumulative value of the scallop net revenue per vessel will be only marginally lower (0.1 percent) in the medium-term compared to the Status Quo values, the adopted action will not have significant impacts for the scallop vessels compared to Status Quo levels.

The adopted action will have positive economic benefits in both the short and long term for the LAGC fishery starting in FY 2011, as the LAGC ACL will increase compared to No Action allocations. Under the adopted allocations, LAGC vessels will be allocated 5 percent of the total ACL and the LA vessels with the IFQ permits will be allocated 0.5-percent of the total ACL. The positive short- and long-term economic impacts of these allocations for the LAGC vessels, compared to the No Action alternative, result from the higher allocation of scallops to the LAGC fleets (1.3 percent higher in FY 2011 and 2.9 percent higher in FY 2012) than those allocated under No Action. In addition, compared to FY 2010 revenues, which was the first year that the LAGC IFQ Program was implemented, the revenues of LAGC vessels will be higher under the adopted action. There are no alternatives that

would generate higher economic benefits for the participants of the scallop fishery. In fact, because the LAGC allocations are derived from the ACL, the values are identical across all alternatives considered, with the exception of No Action.

In summary, this action will not have a considerable adverse impact on the net revenues and profits on the LA and LAGC scallop fleets. Therefore, the adopted action is not expected to have significant economic impacts on the viability of these vessels, especially in a highly profitable industry like the scallop fishery.

#### 2. Access Area Trip Allocations and Use of Split-Fleet Trips Allocated Through a Lottery System

The adopted action to allocate split-fleet trips into access areas with biomass levels not large enough to support a full trip will increase landings, revenues, and total economic benefits to the fishery. The administration of the random allocation process is expected to have positive economic impacts on the fishermen by providing flexibility for the vessels to trade access area trips. With the exception of the No Action alternative, all alternatives considered the same number of access area trips. There were no other alternatives considered that would generate higher economic benefits for the participants of the scallop fishery.

#### 3. Open Area DAS Adjustment if Access Area YTF TAC Is Attained

This action maintains provisions that allocate additional open area DAS if an access area closes due to the attainment of the scallop YTF TAC for unused access area trips (*i.e.*, fully unused trips and compensation trips). This allocation is a continuation of current measures and will have the same impacts as the No Action alternative. This conversion helps to minimize lost catch and revenue for affected vessels if CAI and CAII and/or NLS close due to the full harvest of YTF quota. As a result, this measure will have positive economic impacts on scallop vessels, although the scallop pounds per trip could be lower than the allocated pounds for GB and/or SNE/MA access area trips due to proration to assure that the measure is conservation neutral. There were no alternatives considered to address this issue that would generate higher economic benefits for the participants of the scallop fishery.

#### 4. RSA and Observer Set-Aside TACs

This action will allocate 1 percent of the ABC to the industry-funded observer set-aside program, and will set aside

1.25 M lb (567 mt) from the ABC for the RSA program, based on measures in Amendment 15. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. Although allocating a higher observer set-aside percentage or higher RSA allocation could result in higher indirect benefits to the scallop fleet by increasing available funds for research and the observer program, these set-aside increases could also decrease direct economic benefits to the fishery by reducing revenues, and no such alternatives were considered in this action.

#### 5. NGOM TAC

This action specifies a 70,000-lb (31,751-kg) TAC for the NGOM. This is the same TAC as the No Action alternative. Thus, the action will not have additional economic impacts on the participants of the NGOM fishery. The NGOM TAC has been specified at this level since FY 2008, and the fishery has harvested less than 15 percent of the TAC in each FY; therefore, the TAC has no negative economic impacts. There are no alternatives that would generate higher benefits for NGOM scallop vessels. The alternative for setting the NGOM TAC at 31,100 lb (14,107 kg) is expected to reduce the chance of excess fishing in Federal waters in the NGOM management area, but could result in negative impacts on the participants of the NGOM fishery if landings from NGOM-permitted vessels fishing in state waters lead to the closure of the NGOM management area.

#### 6. Measures To Minimize the Impacts of Incidental Take of Sea Turtles

This action limits the maximum number of trips that can be taken in the Mid-Atlantic areas from June 15 to October 31. Because fishing effort is shifted to a relatively less productive season, total fleet trip costs are expected to increase slightly (*i.e.*, less than 0.1 percent) due to reduced scallop catch rates. Since there is no change in the scallop possession limit, the trips that are shifted from this season are expected to be taken outside of this time period, without a loss in total revenue, as long as this measure, as expected, does not have a negative impact on prices. No other alternatives considered would generate higher benefits for the scallop vessels, other than the No Action alternative, which would continue the FY 2010 measures implemented by Framework 21 (an access area trip-restriction of two trips (or 36,000 lb; 16,329 kg) between June 15 and August

31 in the ETAA and Delmarva, as well as seasonal closures in Delmarva and the ETAA during September and October). Because the basis for No Action is the regulations that match the FY 2010 allocations implemented through Framework 21, the No Action alternative would not account for the opening of HC and would not take the ETAA into account if it were to revert to an open area, thus it would only reduce effort in Delmarva. As a result, the No Action alternative would likely not comply with the relevant RPM and T/Cs of the Biological Opinion and thus, it was not considered by the Council. The adopted action is expected to minimize the effort shift from the given time period compared to the other action alternatives considered by the Council; thus, there are no other alternatives that would generate higher benefits for the scallop vessels. In addition, this alternative included a caveat that will allow full-time vessels to fish up to two trips in the Mid-Atlantic if they exchange trips with other vessels so that they have a total four access area trips into the Mid-Atlantic. This provision will provide flexibility to vessel owners and will mitigate any possible distributional impacts this action would have had on vessels.

**7. Elimination of the GB Closed Area Rotation Schedule**

The elimination of the GB rotation schedule that indicates the opening and closing of access areas in the regulations will reduce the public's confusion and administrative burden. Instead, access area schedules will be based solely on survey results and available exploitable biomass as assessed by the Scallop PDT and the SSC. These schedules will be approved by the Council and implemented biannually through the framework adjustment process. This action will improve the management of the scallop resource, with positive impacts on the scallop yield and on economic benefits from the scallop fishery. There are no alternatives that would generate higher benefits for the scallop vessels.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is

required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the scallop fishery. The guide and this final rule will be available upon request.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 14, 2011.

**John Oliver,**

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

For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.14, paragraphs (i)(2)(vi)(F) and (G) are revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

- (i) \* \* \*
- (2) \* \* \*
- (vi) \* \* \*

(F) Unless specified in paragraph (i)(2)(vi)(F)(1) of this section, a full-time vessel shall not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg; the equivalent of one full-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(1) If the owner of a full-time vessel has exchanged a trip(s) with another full-time vessel owner(s), as specified in § 648.60(a)(3)(ii), so that the vessel has

a total access area trip allocation of four combined trips into the Delmarva and Hudson Canyon Access Areas (e.g., two Hudson Canyon trip and two Delmarva trips; one Hudson Canyon trip and three Delmarva trips, three Hudson Canyon trips and one Delmarva trip; no Hudson Canyon trips and four Delmarva trips; or four Hudson Canyon trips and no Delmarva trips) that vessel must not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg; the equivalent of two full-time access area trips) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

(2) [Reserved]

(G) Part-time vessels shall not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg; the equivalent of one part-time access area trip) of scallops from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e) during the period June 15 through October 31. Any scallops fished for, possessed, or retained during this time period from either Delmarva and Hudson Canyon Access Areas, regardless of whether or not they were harvested on a single access area trip or on multiple trips by taking compensation trips, as specified in § 648.60(c), will be applied to this possession and landing limit. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through October 31.

\* \* \* \* \*

■ 3. In § 648.53:

- a. The section heading is revised;
- b. Paragraph (a), the introductory text to paragraph (b), paragraphs (b)(1), (b)(4), (b)(5), (c), (d), (g), (h)(2)(iii), (h)(3)(i)(A), (h)(3)(i)(B), (h)(3)(i)(C), (h)(3)(ii)(A), the introductory text to paragraph (h)(4), and paragraphs (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised;

- c. Paragraphs (h)(2)(v) and (h)(2)(vi) are revised; and
- d. Paragraph (b)(2) is removed and reserved.

The revisions and additions read as follows:

**§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).**

(a) *Scallop fishery ABC.* The ABC for the scallop fishery shall be established through the framework adjustment process specified in § 648.55 and is equal to the overall scallop fishery ACL. The ABC/ACL shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(3) and (a)(4) of this section, after deducting the scallop incidental catch target TAC specified in paragraph (a)(2) of this section, observer set-aside specified in paragraph (g)(1) of this section, and research set-aside specified in Section 648.56(d). The ABC/ACL for the 2013 fishing year is subject to change through a future framework adjustment.

(1) ABC/ACL for fishing years 2011 through 2013 shall be:

- (i) 2011: 27,269 mt.
- (ii) 2012: 28,961 mt.
- (iii) 2013: 28,700 mt.

(2) *Scallop incidental catch target TAC.* The incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22.7 mt) for fishing years 2011, 2012, and 2013.

(3) *Limited access fleet sub-ACL and ACT.* The limited access scallop fishery shall be allocated 94.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). ACT for the limited access scallop fishery shall be established through the framework adjustment process described in § 648.55. DAS specified in paragraph (b) of this section shall be based on the ACTs specified in paragraph (a)(3)(ii) of this section. The limited access fleet sub-ACL and ACT for the 2013 fishing year are subject to change through a future framework adjustment.

(i) The limited access fishery sub-ACLs for fishing years 2011 through 2013 are:

- (A) 2011: 24,954 mt.
- (B) 2012: 26,537 mt.
- (C) 2013: 26,293 mt.

(ii) The limited access fishery ACTs for fishing years 2011 through 2013 are:

- (A) 2011: 21,431 mt.

(B) 2012: 23,546 mt.

(C) 2013: 19,688 mt.

(4) *LAGC fleet sub-ACL.* The sub-ACL for the LAGC IFQ fishery shall be equal to 5.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC IFQ fishery ACT shall be equal to the LAGC IFQ fishery's ACL. The ACL for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The ACL for the LAGC IFQ fishery for vessels issued only both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(1) of this section, after deducting incidental catch, observer set-aside, and research set-aside, as specified in this paragraph (a). The LAGC ACLs for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment.

(i) The ACLs for fishing years 2011 through 2013 for LAGC IFQ vessels without a limited access scallop permit are:

- (A) 2011: 1,320 mt.
- (B) 2012: 1,404 mt.
- (C) 2013: 1,391 mt.

(ii) The ACLs for fishing years 2011 through 2013 for vessels issued both a LAGC and a limited access scallop permits are:

- (A) 2011: 132 mt.
- (B) 2012: 140 mt.
- (C) 2013: 139 mt.

(b) *DAS allocations.* DAS allocations for limited access scallop trips in all areas other than those specified in § 648.59 shall be specified through the framework adjustment process, as specified in § 648.55, using the ACT specified in paragraph (a)(3)(ii) of this section. A vessel's DAS shall be determined and specified in paragraph (b)(4) of this section by dividing the total DAS specified in the framework adjustment by the landings per unit effort (LPUE) specified in paragraph (b)(1) of this section, then dividing by the total number of vessels in the fleet.

(1) *Landings per unit effort (LPUE).* LPUE is an estimate of the average amount of scallops, in pounds, that the limited access scallop fleet lands per DAS fished. The estimated LPUE is the average LPUE for all limited access scallop vessels fishing under DAS, and shall be used to calculate DAS specified in paragraph (b)(4) of this section, the DAS reduction for the AM specified in

paragraph (b)(4)(ii) of this section, and the observer set-aside DAS allocation specified in paragraph (g)(1) of this section. LPUE shall be:

- (i) 2011 fishing year: 2,441 lb/DAS.
- (ii) 2012 fishing year: 2,662 lb/DAS.
- (iii) 2013 fishing year: 2,676 lb/DAS.

\* \* \* \* \*

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in paragraph (a)(3)(ii), as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS allocations, respectively. DAS allocations for the 2013 fishing year are default allocations and are subject to change through a future framework adjustment. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

**SCALLOP OPEN AREA DAS ALLOCATIONS**

Permit category	2011	2012	2013
Full-Time .....	32	34	26
Part-Time ....	13	14	11
Occasional ..	3	3	3

(i) If, prior to the implementation of Framework 22, a limited access vessel uses more open area DAS in the 2011 fishing year than specified in this section, such vessel shall have the DAS used in excess of the 2012 fishing year allocation specified in this paragraph (b)(4) deducted from its fishing year 2012 open area DAS allocation.

(ii) *Accountability measures (AM).* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (b)(4)(iii) of this section, if the ACL specified in paragraph (a)(3)(i) of this section is exceeded for the applicable fishing year, the DAS specified in paragraph (b)(4) of this section for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the ACL divided

by the applicable LPUE for the fishing year in which the AM will apply as specified in paragraph (b)(1) of this section, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be equal to 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to this paragraph (b)(4)(ii). The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(iii) *Limited access AM exception*—If NMFS determines, in accordance with paragraph (b)(4)(ii) of this section, that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.28, the AM specified in paragraph (b)(4)(ii) of this section shall not take effect. The fishing mortality rate of 0.28 is the fishing mortality that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.32.

(iv) *Limited access fleet AM and exception provision timing*. The Regional Administrator shall determine whether the limited access fleet exceeded its ACL specified in paragraph (a)(3)(i) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council (Council) of the determination of whether or not the ACL for the limited access fleet was exceeded, and the amount of landings in excess of the ACL. Upon this notification, the Scallop

Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.28. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(v) The Elephant Trunk Access Area shall change to an open area starting in fishing year 2011. For reference, the Elephant Trunk Access Area was defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area previously known as the Elephant Trunk Access Area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1 .....	38°50' N	74°20' W
ETAA2 .....	38°10' N	74°20' W
ETAA3 .....	38°10' N	73°30' W
ETAA4 .....	38°50' N	73°30' W
ETAA1 .....	38°50' N	74°20' W

(vi) If, prior to the implementation of Framework 22, a vessel lands all or part of an Elephant Trunk Access Area trip that was allocated at the start of the 2011 fishing year, any pounds landed from that declared Elephant Trunk Access Area trip would be converted to DAS and deducted from the vessel's open area DAS allocations in fishing year 2012. This DAS deduction would be equal to the scallop fishing mortality resulting from the open area DAS allocation. For example, if a full-time vessel lands the full 18,000-lb (8,165-kg) possession limit from an Elephant Trunk Access Area trip allocated at the start of the 2011 fishing year, the pounds landed would be converted to DAS and deducted from the vessel's 2012 fishing year DAS allocation as follows: The 18,000 lb (8,165-kg) would first be multiplied by the estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimated open area LPUE for fishing year 2011 (2,441 lb/DAS),

resulting in a DAS deduction of 7.4 DAS ((18,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 7.4 DAS). This amount would be deducted from that vessel's 2012 fishing year (i.e., 34 DAS minus 7.4 DAS), resulting in a total 2012 fishing year DAS allocation of 26.6 DAS. Similarly, Part-time and occasional vessels shall receive deductions of 5.9 DAS and 2.5 DAS, respectively, based on their respective possession limits, for landing their full trip possession limits from the area formerly known as the Elephant Trunk Access Area. If a vessel only lands a portion of its full possession limit, the applicable DAS reduction shall be proportional to those landings. For example, if a full-time vessel lands 9,000 lb (4,082 kg) during a declared Elephant Trunk Access Area trip, that vessel's fishing year 2012 DAS allocation would be reduced by 3.7 DAS (i.e., half of the DAS that would be deducted for a full trip).

(vii) If, prior to the implementation of Framework 22, a vessel owner exchanges an Elephant Trunk Access Area trip for another access area trip as specified in § 648.60(a)(3)(ii) in fishing year 2011, the vessel that receives an additional Elephant Trunk Access Area trip would receive a DAS credit of 7.4 DAS in FY 2011, resulting in a total fishing year 2011 DAS allocation of 39.4 DAS (32 DAS plus 7.4 DAS). This DAS credit from unused Elephant Trunk Access Area trip gained through a trip exchange is based on a full-time vessel's 18,000-lb (8,165-kg) possession limit and is calculated by using the formula specified in paragraph (b)(4)(vi) but the DAS conversion is applied as a DAS credit in the 2011 fishing year, rather than as a DAS deduction in fishing year 2012. Similarly, using the same calculation with a 14,400-lb (6,532-kg) possession limit, part-time vessels would receive a credit of 5.9 DAS if the vessel owner received an additional Elephant Trunk Access Area trip through a trip exchange in the interim between the start of the 2011 fishing year and the implementation of Framework 22 and did not use it. If a vessel fishes any part of an Elephant Trunk Access Area trip gained through a trip exchange, those landings would be deducted from any DAS credit applied to the 2011 fishing year. For example, if a full-time vessel lands 10,000 lb (4,536 kg) from an Elephant Trunk Access Area trip gained through a trip exchange, the pounds landed would be converted to DAS and deducted from the trip-exchange credit as follows: The 10,000 lb (4,536 kg) would first be multiplied by the

estimated average meat count in the Elephant Trunk Access Area (18.4 meats/lb) and then divided by the estimated open area average meat count (also 18.4 meats/lb) and by the estimate open area LPUE for fishing year 2011 (2,441 lb/DAS), resulting in a DAS deduction of 4.1 DAS ((10,000 lb × 18.4 meats/lb)/(18.4 meats/lb × 2,441 lb/DAS) = 4.1 DAS). Thus, this vessel would receive a reduced DAS credit in FY 2011 to account for the Elephant

Trunk Access Area trip exchange of 3.3 DAS (7.4 DAS – 4.1 DAS = 3.7 DAS).  
 (5) *Additional open area DAS.* (i) When Closed Area I, Closed Area II, and/or the Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, for each remaining complete trip in each of these Access Areas, a full-time, part-time, or occasional vessel may fish an additional DAS in open areas during the same fishing year. Part-time and occasional

vessel shall only receive additional DAS if there are no other access areas available in which to take an access area trip. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). The Access Area DAS trip conversion for fishing years 2011 and 2013 are specified in paragraph (b)(5)(ii) of this section.  
 (ii) *Access Area Trip Conversion to Open Area DAS.*

ACCESS AREA TRIP CONVERSION TO OPEN AREA DAS

Permit category	FY	CAI	CAII	NLAA
Full-Time .....	2011	4.3	5.7	N/A
	2012	4.4	5.4	4.3
	2013	N/A	5.4	4.9
Part-Time .....	2011	3.4	4.5	N/A
	2012	3.6	4.3	3.4
	2013	N/A	4.3	3.9
Occasional .....	2011	1.4	1.9	N/A
	2012	1.5	1.8	1.4
	2013	N/A	1.8	1.6

(iii) If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when Closed Area I, Closed Area II, and/or Nantucket Lightship Access Areas close due to the yellowtail flounder TAC, it will be issued additional open area DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder TAC closure in FY 2012, the vessel will be allocated 2.15 DAS (half of 4.3 DAS).

\* \* \* \* \*

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 3 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS before the beginning of the third year of each biennial adjustment, the third-year measures specified in the biennial framework adjustment shall remain in effect for the next fishing year. If a new biennial or other framework adjustment is not implemented by NMFS by the conclusion of the third year, the management measures from that third year would remain in place until a new action is implemented. The Council may also recommend adjustments to DAS allocations or other measures through a framework adjustment at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(j) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the ACT for the limited access fleet, as specified in paragraph (a)(3)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (b)(4)(ii) of this section would still apply, provided the AM exception specified in paragraph (b)(4)(iii) of this section is not invoked.

\* \* \* \* \*

(g) *Set-asides for observer coverage.*  
 (1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL specified in paragraph (a)(1) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. The total TAC for observer set aside is 273 mt in fishing year 2011, 290 mt in fishing year 2012, and 287 mt in fishing year 2013. This 1 percent is divided proportionally into access areas and open areas, as specified in § 648.60(d)(1) and paragraph (g)(2) of this section, respectively. The total observer set-aside TAC specified for fishing year 2013 is a default allocation

and is subject to change through a future framework adjustment

(2) *DAS set-aside for observer coverage.* For vessels assigned to take an at-sea observer on a trip other than an Access Area Program trip, the open-area observer set-aside TACs are 139 mt, 161 mt, and 136 mt for fishing years 2011, 2012, and 2013, respectively. The DAS set-aside shall be determined by dividing these amounts by the LPUE specified in paragraph (b)(1)(i) of this section for each specific fishing year. The DAS set-aside for observer coverage is 137 DAS for the 2011 fishing year, 133 DAS for the 2012 fishing year, and 112 DAS for the 2013 fishing year. A vessel carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing

year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived if set-aside is not available.

(h) \* \* \*

(2) \* \* \*

(iii) *Contribution percentage.* A vessel's contribution percentage shall be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg)/4.18 million lb (1,896 mt) = 1.45 percent). The contribution percentage for a vessel that is issued an IFQ scallop permit and whose owner has permanently transferred all of its IFQ to another IFQ vessel, as specified in paragraph (h)(5)(ii) of this section, shall be equal to 0 percent.

\* \* \* \* \*

(v) *End-of-year carry-over for IFQ.* (A) With the exception of vessels that held a confirmation of permit history as described in § 648.4(a)(2)(ii)(L) for the entire fishing year preceding the carry-over year, LAGC IFQ vessels that have unused IFQ on the last day of February of any year may carry over up to 15 percent of the vessel's original IFQ and transferred (either temporary or permanent) IFQ into the next fishing year. For example, a vessel with a 10,000-lb (4,536-kg) IFQ and 5,000-lb (2,268-kg) of leased IFQ may carry over 2,250 lb (1,020 kg) of IFQ (i.e., 15 percent of 15,000 lb (6,804 kg)) into the next fishing year if it landed 12,750 lb (5,783 kg) (i.e., 85 percent of 15,000 lb (6,804 kg)) of scallops or less in the preceding fishing year. Using the same IFQ values from the example, if the vessel landed 14,000 lb (6,350 kg) of scallops, it could carry over 1,000 lb (454 kg) of scallops into the next fishing year.

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the ACL specified in paragraph (a)(4)(i) of this section, as increased by the total carry-

over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

(vi) *AM for the IFQ fleet.* If a vessel exceeds its IFQ, including all temporarily and permanently transferred IFQ, in a fishing year, the amount of landings in excess of the vessel's IFQ, including all temporarily and permanently transferred IFQ, shall be deducted from the vessel's IFQ as soon as possible in the fishing year following the fishing year in which the vessel exceeded its IFQ. If the AM takes effect, and an IFQ vessel lands more scallops than allocated after the AM is applied, the vessel shall have the IFQ landed in excess of its IFQ after applying the AM deducted from its IFQ in the subsequent fishing year. For example, a vessel with an initial IFQ of 1,000 lb (453.6 kg) in 2010 that lands 1,200 lb (544.3 kg) of scallops in 2010, and is initially allocated 1,300 lb (589.7 kg) of scallops in 2011 would be subject to an IFQ reduction equal to 200 lb (90.7 kg) to account for the 200 lb (90.7 kg) overage in 2010. If that vessel lands 1,300 lb (589.7 kg) of scallops in 2011 prior to application of the 200 lb (90.7 kg) deduction, the vessel would be subject to a deduction of 200 lb (90.7 kg) in 2012. For vessels involved in a temporary IFQ transfer, the entire deduction shall apply to the vessel that acquired IFQ, not the transferring vessel. A vessel that has an overage that exceeds its IFQ in the subsequent fishing year shall be subject to an IFQ reduction in subsequent years until the overage is paid back. For example, a vessel with an IFQ of 1,000 lb (454 kg) in each year over a 3-year period that harvests 2,500 lb (1,134 kg) of scallops the first year would have a 1,500-lb (680-kg) IFQ deduction, so that it would have zero pounds to harvest in year 2, and 500 lb (227 kg) to harvest in year 3. A vessel that has a "negative" IFQ balance, as described in the example, could lease or transfer IFQ to balance the IFQ, provided there are no sanctions or other enforcement penalties that would prohibit the vessel from acquiring IFQ.

(3) \* \* \*

(i) \* \* \*

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permits(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) \* \* \*

(A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the ACL allocated to the IFQ scallop vessels as described in paragraph (a)(4)(i) of this section.

\* \* \* \* \*

(4) *IFQ cost recovery.* A fee, not to exceed 3 percent of the ex-vessel value of IFQ scallops harvested, shall be collected to recover the costs associated with management, data collection, and enforcement of the IFQ program. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in this paragraph (h)(4), shall be responsible for paying the fee as specified by NMFS in this paragraph (h)(4). An IFQ scallop vessel shall incur a cost recovery fee liability for every landing of IFQ scallops. The IFQ scallop permit holder shall be responsible for collecting the fee for all of its vessels'

IFQ scallop landings, and shall be responsible for submitting this payment to NMFS once per year. The cost recovery fee for all landings, regardless of ownership changes throughout the fishing year, shall be the responsibility of the official owner of the vessel, as recorded in the vessel permit or confirmation of permit history file, at the time the bill is sent.

\* \* \* \* \*

(5) \* \* \*

(ii) *Permanent IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent, unless the IFQ is subsequently transferred to another IFQ scallop vessel, other than the originating IFQ scallop vessel, in a subsequent fishing year. If a vessel owner permanently transfers the vessel's entire IFQ to another IFQ vessel, the LAGC IFQ scallop permit shall remain valid on the transferring vessel, unless the owner of the transferring vessel cancels the IFQ scallop permit. Such cancellation shall be considered voluntary relinquishment of the IFQ permit, and the vessel shall be ineligible for an IFQ scallop permit unless it replaces another vessel that was issued an IFQ scallop permit. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the ACL allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer to or receive IFQ from another IFQ scallop vessel.

(iv) *Application for an IFQ transfer.* The owners of vessels applying for a

transfer of IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ in that fishing year. Applications for temporary transfers received less than 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ, if approved, prior to the expiration of the fishing year.

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be less than 100 lb (45 kg) unless that value reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for any of the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative

decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2.5 percent of the ACL allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of, or interest in, a general category scallop allocation that exceeds 5 percent of the ACL allocated to IFQ scallop vessels; or any other failure to meet the requirements of the regulations in 50 CFR part 648. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision, and there is no opportunity to appeal the Regional Administrator's decision. An application that was denied can be resubmitted if the discrepancy(ies) that resulted in denial are resolved.

\* \* \* \* \*

#### § 648.58 [Amended]

■ 4. In § 648.58, paragraphs (a) and (e) are removed and reserved.

■ 5. In § 648.59:

■ a. Paragraphs (a)(4) and (c)(1) are removed and reserved;

■ b. The introductory text in paragraph (b) is revised; and

■ c. Paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(3), (b)(5)(i), (b)(5)(ii)(A), (b)(5)(ii)(B), (c)(2), (c)(5)(i), (c)(5)(ii)(A), (d)(1), (d)(2), (d)(3), (d)(5)(i), (d)(5)(ii)(A), (d)(5)(ii)(B), and (e) are revised to read as follows:

#### § 648.59 Sea Scallop Access Areas.

(a) \* \* \*

(1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Delmarva Scallop Access Area schedule and TACs specified in paragraph (a)(3) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

\* \* \* \* \*

(3) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with

another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(4) and (a)(3)(i)(C)(4). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in paragraph (a)(5)(i) of this section. The Delmarva Access Area scallop TACs for limited access scallop vessels are 5,886,000 lb (2,670 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in paragraph (a)(4)(ii)(A) of this section through the framework adjustment process, and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(4)(ii)(B) of this section. LAGC IFQ vessels will be allocated 355,900 lb (161 mt) in fishing year 2011, 177,490 lb (81 mt) in fishing year 2012, and 178,600 lb (81 mt) in fishing year 2013, which represent 5.5 percent of the Delmarva Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section, LAGC scallop vessels are allocated 593 trips in fishing year 2011, 296 trips in fishing year 2012, and 298 trips in fishing year 2013 to the Delmarva Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared

LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(1) If the fleet-wide Delmarva Access Area trip allocation implemented by Framework 22 is exceeded in the 2011 fishing year, the fleet-wide Delmarva Access Area trip allocation in fishing year 2012 shall be reduced by the number of trips taken in excess of the amount specified in paragraph (a)(3)(ii)(B) of this section.

(2) [Reserved]

(C) Scallops landed by each LAGC IFQ vessel on a Delmarva Access Area trip shall be counted against that vessel's IFQ.

\* \* \* \* \*

(b) *Closed Area I Access Area*—(1) From March 1, 2013, through February 28, 2014 (i.e., fishing year 2013), vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section. The Closed Area I Sea Scallop Access Area schedule and TACs specified in paragraph (b)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) From March 1, 2011, through February 28, 2013 (i.e., fishing years 2011 and 2012), subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in 648.60.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1 .....	41°26' N	68°30' W
CAIA2 .....	40°58' N	68°30' W
CAIA3 .....	40°55' N	68°53' W
CAIA4 .....	41°04.5' N	69°01' W
CAIA1 .....	41°26' N	68°30' W

\* \* \* \* \*

(5) \* \* \*

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in paragraph (c)(5)(i) of this section. The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (b)(5)(i). The Closed Area I Access Area scallop TAC for limited access scallop vessels is 8,829,000 (4,005 mt) in fishing year 2011, and 2,943,000 lb (1,335 mt) in fishing year 2012. Closed Area I Access Area is closed to limited access vessels for the 2013 fishing year.

(ii) \* \* \*

(A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. LAGC IFQ vessels will be allocated 533,850 lb (242 mt) in fishing year 2011, and 177,490 lb (81 mt) in fishing year 2012, which represent 5.5 percent of the Closed Area I Access Area TACs for each fishing year. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area will be closed to LAGC IFQ vessels in fishing year 2013.

(B) Based on the TACs specified in paragraph (b)(5)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 890 trips in fishing year 2011, and 296 trips in fishing year 2012 in the Closed Area I Access Area. No LAGC IFQ trips will be allocated in Closed Area I Access Area in fishing year 2013.

The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (b)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(c) \* \* \*  
 (2) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Closed Area II Sea Scallop Access Area schedule and TACs specified in paragraph (c)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(5) \* \* \*  
 (i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). The Closed Area II Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2011 and 5,886,000 lb (2,670 mt) in fishing years 2012 and 2013.

(ii) \* \* \*  
 (A) The percentage of the total Closed Area II Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2011 through 2013 fishing years.

(d) \* \* \*  
 (1) From March 1, 2011, through February 28, 2012 (i.e., fishing year 2011), vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2012, through February 28, 2014 (i.e., fishing years 2012 and 2013), subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Nantucket Lightship Sea Scallop Access Area schedule and TACs specified in paragraph (d)(5) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLAA1 .....	40°50' N	69°30' W
NLAA2 .....	40°50' N	69°00' W
NLAA3 .....	40°20' N	69°00' W
NLAA4 .....	40°20' N	69°30' W
NLAA1 .....	40°50' N	69°30' W

\* \* \* \* \*

(5) \* \* \*  
 (i) *Limited access vessels*. Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The Nantucket Lightship Access Area scallop TACs for limited access scallop vessels are 2,943,000 lb (1,335 mt) in fishing year 2012, and 5,886,000 lb (2,670 mt) in fishing year 2013. The Nantucket Lightship Access Area will be closed to limited access vessels in fishing year 2011.

(ii) \* \* \*  
 (A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. The Nantucket Lightship Access Area will be closed to LAGC IFQ vessels in fishing year 2011. LAGC IFQ vessels are allocated 177,490 lb (81 mt) in fishing year 2012 and 357,200 lb (162 mt) in fishing year 2013, which represent 5.5 percent of the Nantucket Lightship Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 296 trips in fishing year 2012, and 595 trips in fishing year 2013 to the Nantucket Lightship Access Area. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the total number of trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ scallop vessel

may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

\* \* \* \* \*  
(e) *Hudson Canyon Sea Scallop Access Area.* (1) From March 1, 2011, through February 28, 2014 (i.e., fishing years 2011 through 2013), a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. The Hudson Canyon Sea Scallop Access Area schedule and TACs specified in paragraph (e)(4) of this section for fishing year 2013 are default measures and subject to change through a future framework adjustment.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1 .....	39°30' N	73°10' W
H2 .....	39°30' N	72°30' W
H3 .....	38°30' N	73°30' W
H4 .....	38°50' N	73°30' W
H5 .....	38°50' N	73°42' W
H1 .....	39°30' N	73°10' W

(3) [Reserved]

(4) *Number of trips—(i) Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Hudson Canyon Sea Scallop Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Hudson Canyon Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time and part-time scallop vessels are restricted in the number of trips that may be taken from June 15 through October 31, as specified in § 648.60(a)(3)(i)(B)(4) or § 648.60(a)(3)(i)(C)(4). The Hudson Canyon Access Area scallop TACs for limited access scallop vessels are

5,886,000 lb (2,670 mt) in fishing year 2011, and 8,829,000 lb (4,005 mt) in fishing years 2012 and 2013.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Hudson Canyon Access Area TAC to be allocated to LAGC scallop vessels shall be specified through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 355,900 lb (161 mt) in fishing year 2011, 532,460 lb (242 mt) in fishing year 2012, and 535,800 lb (243 mt) in fishing year 2013, which is 5.5 percent of the Hudson Canyon Access Area TAC for each fishing year. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 593, 887, and 893 trips in the Hudson Canyon Access Area in fishing years 2011, 2012, and 2013, respectively. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Hudson Canyon Access Area, or enter the Hudson Canyon Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on a Hudson Canyon Access Area trip shall count against that vessel's IFQ.

\* \* \* \* \*

■ 6. In § 648.60, paragraphs (a)(3)(i), (a)(5)(i), (c)(5)(ii)(A), (c)(5)(v), (d)(1), the heading of paragraph (e), and paragraphs (e)(1) and (g)(1) are revised, paragraph (a)(3)(ii)(A) is added, and paragraph (a)(3)(ii)(B) is added and reserved, to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) \* \* \*

(3) \* \* \*

(i) *Limited access vessel trips.* (A)

Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B)

through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section.

(1) In fishing year 2011, if a full-time vessel engages in trip exchanges, as specified in § 648.60(a)(3)(ii), prior to the implementation of Framework 22, resulting in such vessel receiving a total of five access area trips due to the mid-year implementation of Framework 22, the vessel must relinquish one trip of the vessel owner's choice in fishing year 2011 from its available access area trip allocation in order not to exceed the allocation of four trips as specified in paragraph (a)(3)(i)(B) of this section. As soon as possible after the implementation of Framework 22, NMFS shall send a notification letter to the owner of such a vessel regarding the requirement that one of the vessel's unused access area trips must be relinquished in fishing year 2011 to account for the previous trip exchange. The vessel owner will be given the opportunity to select the area from which the trip will be deducted, with NMFS determining the area if the vessel owner fails to respond within 30 days according to instructions provided in such letter.

(2) [Reserved]

(B) *Full-time scallop vessels.*—(1) In fishing year 2011, each full-time vessel shall have a total of four access area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(4) of this section. All full-time scallop vessels shall be allocated one trip in the Delmarva Access Area, one trip into the Hudson Canyon Access Area, and one trip into the Closed Area I Access Area. In addition, each vessel shall receive either an additional trip into the Closed Area I Access Area or a trip into the Closed Area II Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available on the Northeast Regional website prior to the start of the 2011 fishing year.

(2) In fishing year 2012, each full-time vessel shall have a total of four access

area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(4) of this section. All full-time vessels shall receive one trip into the Closed Area II Access Area and one trip into the Hudson Canyon Access Area. Each vessel shall also receive an additional two access area trips that must be allocated in one of the following combinations: One trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one additional trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and an additional trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or an additional trip in the Hudson Canyon Access Area and one in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available prior to the start of the 2012 fishing year. A full description of the random assignment process for FY 2012 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(3) At the start of fishing year 2013, each full-time vessel shall have a total of four access area trips and are subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(4) of this section. The access area trip allocations for the 2013 fishing year are default allocations that are subject to change in a future framework adjustment. All full-time scallop vessels shall be allocated one trip in the Closed Area II Access Area, one trip in the Nantucket Lightship Access Area, and one trip in the Hudson Canyon Access Area. In addition, each vessel shall receive either an additional trip in the Hudson Canyon Access Area or in the Delmarva Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and will be made publically available prior to the start of the 2013 fishing year. A full description of the random assignment process for FY 2013 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(4) A full-time scallop vessel may not fish for, possess, or retain more than a combined total of 18,000 lb (8,165 kg) of scallops during the period June 15 through October 31, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during this time period from the Delmarva and Hudson

Canyon Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may possess or land up to 18,000 lb (8,165 kg) from the Hudson Canyon Access Area, up to 18,000 lb (8,165 kg) from the Delmarva Access Area, or up to 18,000 lb (8,165 kg) combined from separate trips into each access area during June 15 through October 31. The remaining access area trips may be taken during the remainder of the fishing year. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31. In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i), during this time period from the Delmarva and/or Hudson Canyon Access Areas combined.

(i) If, prior to the implementation of Framework 22, a full-time vessel with less than four total Mid-Atlantic access trips possesses or lands more than 18,000 lb (8,165 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31. Alternatively, a full-time vessel could account for the overage by exchanging trips with another vessel(s) so that it has an allocation of a total of four Mid-Atlantic trips and continue to fish up to a maximum of 36,000 lb (16,329 kg) (i.e., the equivalent of two full-time limited access trips) through October 31, 2011.

(ii) [Reserved]

(C) *Part-time scallop vessels.* (1) For the 2011 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Closed Area I Access Area and one trip in the Closed Area II Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area; or one

trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(4) of this section.

(2) For the 2012 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area I Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(4) of this section.

(3) For the 2013 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area II Access Area and one trip in the Hudson Canyon Access Area; one trip in the Closed Area II Access Area and one trip in the Delmarva Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area; one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area; or one trip in the Hudson Canyon Access Area and one trip in the Delmarva Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(4) of this section. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(4) A part-time scallop vessel may not fish for, possess, or retain more than a combined total of 14,400 lb (6,532 kg) of scallops, the equivalent of one full trip possession limit specified in § 648.60(a)(5)(i), during the period June 15 through October 31 from the Delmarva and Hudson Canyon Access Areas specified in § 648.59(a) and (e). For example, a part-time vessel may possess or land up to 14,400 lb (6,532 kg) from the Hudson Canyon Access Area, up to 14,400 lb (6,532 kg) from the Delmarva Access Area, or up to 14,400 lb (6,532 kg) combined from separate trips into each access area during June

15 through October 31. The remaining access area trips allocated to part-time vessels may be taken in the Hudson Canyon Access Area or Delmarva Access Area during the remainder of the fishing year, or taken in a different access area during the period of June 15 through October 31. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through October 31.

(i) If, prior to the implementation of Framework 22, a part-time vessel possesses or lands more than 14,400 lb (6,532 kg) from declared access area trips into the Delmarva and Hudson Canyon Access Areas combined during June 15 through October 31 in fishing year 2011, that vessel shall not declare an access area trip in fishing year 2012 in the Mid-Atlantic during June 15 through October 31.

(ii) [Reserved]

(D) *Occasional scallop vessels.* (1) For the 2011 fishing year, an occasional scallop vessel may take one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Hudson Canyon Access Area, or one trip in the Delmarva Access Area.

(2) For the 2012 fishing year, an occasional scallop vessel may take one

trip in the Hudson Canyon Access Area, or one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(3) For the 2013 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area. The access area trip allocations for the 2013 fishing year are default allocations and are subject to change in a future framework adjustment.

(E) [Reserved]

(ii) \* \* \*

(A) *Trip exchanges involving Elephant Trunk Access Area trips that occur in the 2011 fishing year prior to the implementation of Framework 22.* See § 648.53(b)(4)(vii).

(B) [Reserved]

\* \* \* \* \*

(5) \* \* \*

(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts

specified in the table in this paragraph (a)(5). Full-time and part-time vessels shall not fish for, possess, or retain more than 18,000 lb (8,165 kg) and 14,400 lb (6,532 kg), respectively, of scallops from the Hudson Canyon and Delmarva Access Areas, combined, from trips taken between June 15 and October 31 (i.e., the equivalent of one full trip based on permit category). In addition, if the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has a total allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph (a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas. These possession and landing restrictions do not include the additional possession allowance to defray the cost of carrying an observer as specified in paragraph (d) of this section that occur during observed trips between June 15 and October 31. No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2010 .....	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2012 .....	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)
2013 .....	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) Pursuant to paragraphs (a)(3)(i)(B)(4) or (a)(3)(i)(C)(4) of this section, a full-time or part-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through October 31 if the compensation trip would allow a vessel to land more than 18,000 lb (8,165 kg) or 14,400 lb (6,532 kg) (i.e., the equivalent of one full access area trip), respectively, during the period June 15 through October 31, in the Hudson Canyon Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2011, and intends to declare two full trips in the Hudson Canyon Access Area access area from June 15 through

October 31, must wait to fish its compensation trip in the Delmarva Access Area until on or after November 1, 2011. If the owner of a full-time vessel has exchanged a trip(s) with another vessel owner(s) so that the vessel has an allocation of four combined trips into the Delmarva and/or Hudson Canyon Access Areas, that vessel may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in paragraph 648.60(a)(5)(i) of this section, during this time period from the Delmarva and/or Hudson Canyon Access Areas.

\* \* \* \* \*

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the

allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates an Delmarva Access Area trip on December 29, 2011, must declare that it is beginning its additional compensation trip during the first 60 days that the Delmarva Access Area is open (March 1, 2012, through April 29, 2012). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip

authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area I trip on December 10, 2012, may not carry its additional compensation trip into the 2013 fishing year because Closed Area I is not open during the 2013 fishing year, and must complete any compensation trip by January 31, 2013.

(d) \* \* \*

(1) *Observer set-aside limits by area—*

(i) *Nantucket Lightship Access Area.* For the 2012 and 2013 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 36,000 lb (16 mt) and 84,450 lb (38 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2011 and 2012 fishing years, the observer set-asides for the Closed Area I Access Area are 111,540 lb (51 mt) and 36,000 lb (316 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Closed Area II Access Area are 35,060 lb (16 mt), 67,890 lb (31 mt), and 79,600 lb (36 mt), respectively.

(iv) *Delmarva Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Delmarva Access Area are 74,360 lb (34 mt), 36,000 lb (316 mt), and 42,230 lb (19 mt), respectively.

(v) *Hudson Canyon Access Area.* For the 2011, 2012, and 2013 fishing years, the observer set-aside for the Hudson Canyon Access Area are 74,360 lb (34

mt), 107,980 lb (49 mt), and 126,680 lb (57 mt), respectively.

\* \* \* \* \*

(e) *Sea Scallop Research Set-Aside Harvest in Access Areas—*

(1) *Access Areas available for harvest of research set-aside (RSA).* RSA may be harvested in any access area that is open in a given fishing year, as specified through a framework adjustment and pursuant to § 648.56. The amount of pounds that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2011 through 2013 are:

(i) *2011:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, and Closed Area II Access Area.

(ii) *2012:* Delmarva Access Area, Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area.

(iii) *2013:* Delmarva Access Area, Hudson Canyon Access Area, Nantucket Lightship Access Area, and Closed Area II Access Area.

\* \* \* \* \*

(g) \* \* \*

(1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in

§ 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

\* \* \* \* \*

■ 7. In § 648.62, paragraph (b)(1) is revised to read as follows.

**§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.**

\* \* \* \* \*

(b) \* \* \*

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2011, 2012, and 2013 fishing years. The NGOM TAC for the 2013 fishing year is a default allocation and is subject to change in a future framework adjustment.

\* \* \* \* \*

[FR Doc. 2011-18314 Filed 7-20-11; 8:45 am]

BILLING CODE 3510-22-P